banks and/or trust companies in the State in which such national banking associations are located may have with respect to such State institutions under State laws now in force or hereafter enacted: *Provided*, That nothing herein shall be construed to permit the establishment of branches of either national or State member banks or allow consolidation of either national or State member banks not allowed by existing laws.

Proviso. Restriction.

Assessment of expenses.

Expenses incurred by the Comptroller of the Currency in the exercise of such powers may be assessed by him against the banks concerned and, when so assessed, shall be paid by such banks.

Powers not impaired hereby.

Nothing herein shall be construed to impair any power otherwise possessed by the Comptroller of the Currency, the Secretary of the Treasury or the Federal Reserve Board.

Duration.

The powers herein conferred shall terminate six months from its approval by the President; but the President of the United States may extend its force by proclamation for an additional six months.

Approved, February 25, 1933.

[CHAPTER 127.]

February 27, 1933.
[H. R. 7521.]
[Public, No. 375.]

AN ACT

To provide a new Code of Civil Procedure for the Canal Zone and to repeal the existing Code of Civil Procedure.

Code of Civil Procedure, Canal Zone.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the thirty-nine chapters hereinafter set forth shall constitute the Code of Civil Procedure for the Canal Zone.

PRELIMINARY PROVISIONS.

CHAPTER 1.—PRELIMINARY PROVISIONS

Title.

SECTION 1. TITLE OF THIS CODE.—This code shall be known as the Code of Civil Procedure of the Canal Zone.

Effective date.

SEC. 2. WHEN THIS CODE TAKES EFFECT.—This code shall take effect on the first day of October, 1933.

Not retroactive.

SEC. 3. NOT RETROACTIVE.—No part of it is retroactive unless expressly so declared.

Rule of construction.

SEC. 4. RULE OF CONSTRUCTION OF THIS CODE.—The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of the Canal Zone respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed with a view to effect its objects and to promote justice.

Holidays.

SEC. 5. HOLIDAYS.—Holidays within the meaning of this code are every Sunday and such other days as are enumerated as holidays in section 7 of the Civil Code.

Computation of time.

SEC. 6. COMPUTATION OF TIME.—The time in which any Act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

Words and phrases. Construction of.

SEC. 7. WORDS AND PHRASES.—Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in section 8, are to be construed according to such peculiar and appropriate meaning or definition.

Definition of terms.

SEC. 8. CERTAIN TERMS USED IN THIS CODE DEFINED.—Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine

and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person can not write, his name being written near it by a person who writes his own name as a witness: *Provided*, That when a signature is by mark it must, in order that the same may be acknowledged or may serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witness thereto.

"Person."

"Testify"; "depose."

Proviso. Signature by mark.

The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes both real and personal property;

"Property."

2. The words "real property" are coextensive with lands, tenements, and hereditaments;

"Real property."

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;

"Personal property."

4. The word "month" means a calendar month, unless otherwise expressed;

"Month."

5. The word "will" includes codicil;

"Will."

6. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer; and the word "process" a writ or summons issued in the course of judicial proceedings;

"Writ"; "process."

7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States" may include the District and Territories;

"State."

"United States."

8. The word "affinity," when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.

"Affinity."

SEC. 9. DIVISION OF JUDICIAL REMEDIES.—Judicial remedies are divided into two classes:

Judicial remedies, division of.

1. Actions; and
2. Special proceedings.

SEC. 10. ACTION DEFINED.—An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

"Action" defined.

SEC. 11. SPECIAL PROCEEDINGS DEFINED.—Every other remedy is a special proceeding.

Special proceedings.

SEC. 12. CIVIL ACTIONS ARISE OUT OF OBLIGATIONS OR INJURIES.—A civil action arises out of—

Civil actions.

1. An obligation;
2. An injury.

SEC. 13. OBLIGATION DEFINED.—An obligation is a legal duty, by which one person is bound to do or not to do a certain thing, and arises from:

"Obligation" defined.

1. Contract; or
2. Operation of law.

SEC. 14. DIVISION OF INJURIES.—An injury is of two kinds:

Division of injuries.

1. To the person; and
2. To property.

SEC. 15. INJURIES TO PROPERTY.—An injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it.

Injuries to property.

To person.

SEC. 16. INJURIES TO THE PERSON.—Every other injury is an injury to the person.

Prosecution of civil action.

SEC. 17. CIVIL ACTION, BY WHOM PROSECUTED.—A civil action is prosecuted by one party against another for the enforcement or protection of a right, or the redress or prevention of a wrong.

Civil and criminal remedies not merged.

SEC. 18. CIVIL AND CRIMINAL REMEDIES NOT MERGED.—When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

COURTS OF JUSTICE, GENERAL PROVISIONS.

CHAPTER 2.—GENERAL PROVISIONS RESPECTING COURTS OF JUSTICE

Sittings, public.

SEC. 19. SITTINGS, PUBLIC.—The sittings of every court of justice shall be public, except as provided in section 20.

Sittings, private.

SEC. 20. SITTINGS, WHEN PRIVATE.—In an action for divorce, criminal conversation, seduction, or breach of promise of marriage, the court may direct the trial of any issue of fact joined therein to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel: *Provided*, That in any cause the court may, in the exercise of a sound discretion, during the examination of a witness, exclude any or all other witnesses in the cause.

Proviso. Exclusion of witnesses.

Conduct of proceedings. Power of court.

SEC. 21. POWERS RESPECTING CONDUCT OF PROCEEDINGS.—Every court shall have power:

1. To preserve and enforce order in its immediate presence;

2. To enforce order in the proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

3. To provide for the orderly conduct of proceedings before it, or its officers;

4. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein;

5. To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;

6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code;

7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties;

8. To amend and control its process and orders so as to make them conformable to law and justice.

District court seal.

SEC. 22. DISTRICT COURT TO HAVE SEAL.—The district court shall have a seal, which shall be kept by the clerk of the court.

To what documents affixed.

SEC. 23. SAME; TO WHAT DOCUMENTS AFFIXED.—The seal of the district court need not be affixed to any proceeding therein or document, except:

1. To a writ;

2. To the certificate of probate of a will or of the appointment of an executor, administrator, or guardian;

3. To the authentication of a copy of a record or other proceeding of the court, or of an officer thereof, or of a copy of a document on file in the office of the clerk.

District court dockets.

SEC. 24. DISTRICT COURT DOCKETS.—In addition to such dockets as may be specially provided for herein, the clerk of the district court, under the direction of the judge, must cause to be prepared,

and shall keep, such other dockets as may be required for the purposes of said court.

District judge, powers, etc.

SEC. 25. POWERS OF DISTRICT JUDGE.—The district judge may, at chambers, grant all orders and writs which are usually granted in the first instance upon an ex parte application, and may, at chambers, hear and dispose of such orders and writs; and may also, at chambers, appoint appraisers, receive inventories and accounts to be filed, suspend the powers of executors, administrators, or guardians in the cases allowed by law, grant special letters of administration or guardianship, approve claims and bonds, and direct the issuance from the court of all writs and process necessary in the exercise of their powers in matters of probate.

Disqualification of judges.

SEC. 26. DISQUALIFICATION OF JUDGES.—No judge or magistrate shall sit or act as such in any action or proceeding:

1. To which he is a party or in which he is interested;

2. When he is related to either party, or to an officer of a corporation, which is a party, or to an attorney, counsel, or agent of either party, by consanguinity or affinity within the third degree computed according to the rules of law;

3. When, in the action or proceeding, or in any previous action or proceeding involving any of the same issues, he has been attorney or counsel for any party; or when he has given advice to any party upon any matter involved in the action or proceeding; or when he has been retained or employed as attorney or counsel for any party within two years prior to the commencement of the action or proceeding;

4. When it appears from the affidavit or affidavits on file that either party can not have a fair and impartial trial before the district judge, about to try the case, by reason of the prejudice or bias of such judge. The affidavit or affidavits alleging the disqualification of the judge must be filed and served upon the adverse party or the attorney for such party at least one day before the day set for trial of such action or proceeding; provided, counteraffidavits may be filed at least one day thereafter, or such further time as the court may extend the time for filing such counteraffidavits, not exceeding five days, and for this purpose the court may continue the trial.

Partner of judge practicing law, prohibited.

SEC. 27. NO JUDGE OR MAGISTRATE TO HAVE PARTNER PRACTICING LAW.—No judge or magistrate shall have a partner acting as attorney or counsel in any court of the Canal Zone.

Powers of district judge, out of court.

SEC. 28. POWERS OF DISTRICT JUDGE.—The district judge may exercise out of court all the powers expressly conferred upon the judge, as contradistinguished from the court.

Powers of judicial officers, conduct of proceedings.

SEC. 29. POWERS OF JUDICIAL OFFICERS AS TO CONDUCT OF PROCEEDINGS.—Every judicial officer shall have power:

1. To preserve and enforce order in his immediate presence, and in proceedings before him, when he is engaged in the performance of official duty;

2. To compel obedience to his lawful orders as provided in this code;

3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this code;

4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and duties.

To punish for contempt.

SEC. 30. TO PUNISH FOR CONTEMPT.—For the effectual exercise of the powers conferred by section 29, a judicial officer may punish for contempt in the cases provided in this code.

Take acknowledgments and affidavits.

SEC. 31. TO TAKE ACKNOWLEDGMENTS AND AFFIDAVITS.—The district judge and the magistrates shall have power to take and certify:

1. The proof and acknowledgment of a conveyance of real property or of any other written instrument;

2. The acknowledgment of satisfaction of a judgment of any court;

3. An affidavit or deposition to be used in the Canal Zone.

CROSS REFERENCE

Post, p. 1164. Proof and acknowledgment of instruments, see Civil Code, sections 289 et seq.

Proceedings in English.

SEC. 32. PROCEEDINGS TO BE IN ENGLISH LANGUAGE.—Every written proceeding in a court of justice in the Canal Zone shall be in the English language, and judicial proceedings shall be conducted and preserved in no other.

Means to carry jurisdiction into effect.

SEC. 33. MEANS TO CARRY JURISDICTION INTO EFFECT.—When jurisdiction is, by this code, or by any other statute, conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

District court reports prima facie correct.

SEC. 34. REPORTS PRIMA FACIE CORRECT STATEMENTS.—The report of the official reporter, or official reporter pro tempore, of the district court, duly appointed and sworn, when transcribed and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie evidence of such testimony and proceedings.

ATTORNEYS AND COUNSELORS AT LAW.

CHAPTER 3.—ATTORNEYS AND COUNSELORS AT LAW

Admission to practice.

SEC. 35. ADMISSION TO PRACTICE.—1. Any person of good moral character who has been admitted to practice in the Supreme Court of the United States, or in the highest court of the District of Columbia, or in the highest court of any State or Territory, may be admitted, on motion in open court, to practice as an attorney of the district court.

Foreign attorneys.

2. Any person of good moral character who has been admitted to practice in the highest court of any foreign country may be admitted to practice as an attorney of the district court: *Provided, however*, That the requirements for practice in such foreign countries be a preliminary education, in addition to grade and high school education, of at least two years law course in an approved law school: *Provided further*, That such person shall have practiced law in the courts of his own or of a foreign country for a period of three years.

Provisos.
Requirements.

Law practice.

Application for admission.

3. Every applicant for admission shall file his application with the clerk, produce his license and satisfactory evidence that it has not been revoked, file with the clerk statements of at least three reputable persons, one of whom must be a member in good standing of the bar of the district court, attesting to the good moral character of the applicant; and, if admission is sought under subdivision 2 of this section, every applicant shall, in addition, furnish satisfactory evidence as to the requirements for practice in such foreign country and the applicant's practice for the requisite period. The motion for admission must be made in open court by a member in good standing of the bar of the district court. Such person shall upon the filing of his application pay to the clerk a fee of $15 which fee shall be accounted for by the clerk as miscellaneous receipts.

Requirements.

4. Any person of good moral character who has attained the age of twenty-one years may be admitted to the practice of law in the courts of the Canal Zone by the judge of the United States district

court thereof upon giving satisfactory evidence that he has a general education equivalent to graduation from a high school of the Canal Zone, has studied law under proper instruction for at least three years, and has passed an examination in the law to be prescribed and conducted by the judge of the district court or by a committee of the bar appointed by him for that purpose. The judge of the district court is empowered to make rules to establish the qualifications of the candidates.

Certificate of admission.

SEC. 36. CERTIFICATE OF ADMISSION.—Upon admission of an applicant to the bar, the district court shall direct an order to be entered to that effect upon its records, and that a certificate of such admission be given to him by the clerk of the court, which certificate shall be his license.

Oaths.

SEC. 37. OATHS.—Before receiving a certificate the applicant shall take and subscribe in court the following oaths:

1. "I, ——— recognize and accept the supreme authority of the United States of America, in the Canal Zone, and I do swear that I will obey the existing laws which rule in the Canal Zone, as well as the legal orders and decrees of the duly constituted authorities therein; that I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

2. "I do solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, but will conduct myself in the office of a lawyer within the courts according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients. So help me God."

Roll of attorneys.

SEC. 38. ROLL OF ATTORNEYS.—The clerk of the district court shall keep a roll of attorneys admitted to practice, which roll must be signed by the person admitted before he receives his license.

Attorneys on bonds.

SEC. 39. ATTORNEYS ON BONDS.—Attorneys will not be accepted as sureties upon bonds or recognizances required to be filed in court.

Who may conduct litigation.

SEC. 40. WHO MAY CONDUCT LITIGATION.—A person may conduct his litigation personally or by the aid of a lawyer, in either the district or magistrates' courts.

Duties of attorneys.

SEC. 41. DUTIES.—It is the duty of an attorney and counselor:

1. To support the laws of the Canal Zone and the applicable laws of the United States;

2. To maintain the respect due to the courts of justice and judicial officers;

3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest;

8. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

Authority.

SEC. 42. AUTHORITY.—An attorney shall have authority:

1. To bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk, or entered upon the minutes of the court, and not otherwise;

2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Change of attorney.

SEC. 43. CHANGE OF ATTORNEY.—The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon consent of both client and attorney, filed with the clerk, or entered upon the minutes;

2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

Notice of change.

SEC. 44. NOTICE OF CHANGE.—When an attorney is changed, as provided in section 43, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party. Until then he must recognize the former attorney.

Death or removal of attorney.

SEC. 45. DEATH OR REMOVAL OF ATTORNEY.—When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action, for whom he was acting as attorney, must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person.

Causes for removal, by court.

SEC. 46. CAUSES FOR WHICH COURT MAY REMOVE ATTORNEY.—An attorney may be removed or suspended by the district court, for any of the following causes, arising after his admission to practice:

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction shall be conclusive evidence;

2. Willful disobedience or violation of an order of the district court requiring him to do or forbear an act connected with, or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney and counselor;

3. Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

4. Lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

5. For the commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his relations as an attorney or counselor at law, or otherwise, and whether the same shall constitute a felony or misdemeanor or not; and in the event that such act shall constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.

Proceedings for removal or suspension.

SEC. 47. PROCEEDINGS FOR REMOVAL OR SUSPENSION.—The proceedings to remove or suspend an attorney and counselor, under the first subdivision of section 46, must be taken by the district court on the receipt of a certified copy of the record of conviction. The proceedings under any of the other subdivisions of that section may be taken by the court for the matters within its knowledge, or may be taken upon the information of another.

Accusation.

SEC. 48. ACCUSATION.—If the proceedings are upon the information of another, the accusation must be in writing.

Verification of.

SEC. 49. VERIFICATION OF ACCUSATION.—The accusation must state the matters charged, and be verified by the oath of some person, to the effect that the charges therein contained are true, which verification may be made upon information and belief when the accusation is presented by an organized bar association.

Citation of accused by publication.

SEC. 50. CITATION OF ACCUSED BY PUBLICATION.—Upon receiving the accusation, the district court shall make an order requiring the accused to appear and answer it at a specified time, and shall cause a copy of the order and of the accusation to be served upon the accused at least five days before the day appointed in the order. If it shall appear by affidavit to the satisfaction of the court or judge that the accused resides out of the Canal Zone; or has departed from the Canal Zone; or can not, after due diligence, be found within the Canal Zone; or conceals himself to avoid the service of the order to show cause, the court or judge may direct the service of a citation to the accused, requiring him to appear and answer the accusation, to be made by publication in a newspaper of general circulation, in the Canal Zone for thirty days. Such citation must be directed to the accused, recite the date of the filing of the accusation, the name of the accuser, and the general nature of the charges against him, and require him to appear and answer the accusation at a specified time. On proof of the publication of the citation as herein required the court shall have jurisdiction to proceed to hear the accusation and render judgment with like effect as if an order to show cause and a copy of the accusation had been personally served on the accused.

Appearance.

SEC. 51. APPEARANCE.—The accused must appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assign another day for that purpose. If he do not appear, the court may proceed and determine the accusation in his absence.

Objections to accusation.

SEC. 52. OBJECTIONS TO ACCUSATION.—The accused may answer to the accusation either by objecting to its sufficiency or denying it.

Demurrer.

SEC. 53. DEMURRER.—If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Answer.

SEC. 54. ANSWER.—If an objection to the sufficiency of the accusation be not sustained, the accused must answer within such time as may be designated by the court.

Trial.

SEC. 55. TRIAL.—If the accused plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he deny the matters charged, the court shall, at such time as it may appoint, proceed to try the accusation.

Committee to take depositions.

SEC. 56. REFERENCE TO TAKE DEPOSITIONS.—The court may, in its discretion, order a reference to a committee to take depositions in the matter.

Judgment.

SEC. 57. JUDGMENT.—Upon the receipt of a certified copy of the record of conviction of an attorney of a crime involving moral turpitude, the district court must suspend the attorney until judgment in the case has become final. When a judgment of conviction in such case has become final the court shall order the attorney permanently disbarred. When the attorney has been found guilty of the charges made in proceedings not based upon a record of conviction, judgment shall be rendered disbarring the attorney either permanently or for a limited time, according to the gravity of the offense charged. During such suspension or disbarment the attorney shall be precluded from practicing as an attorney at law or as an attorney or agent of another in and before all courts, commissions,

and tribunals in the Canal Zone, and from practicing as attorney or counselor at law in any manner and from holding himself out to the public as an attorney or counselor at law. When permanently disbarred his name shall be stricken from the roll of attorneys and counselors.

Disqualified attorney as plaintiff.

SEC. 58. DISQUALIFIED ATTORNEY AS PLAINTIFF.—No person who has been an attorney and counselor shall while a judgment of disbarment or suspension is in force, appear on his own behalf as plaintiff in the prosecution of any action where the subject of said action has been assigned to him subsequent to the entry of the judgment of disbarment or suspension.

Compensation; contract for services.

SEC. 59. COMPENSATION TO BE REASONABLE; CONTRACT FOR SERVICES.—An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for the services rendered, having in view the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. But in such cases the court shall not be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount of recovery if found by the court not to be unconscionable or unreasonable.

FORM OF CIVIL ACTIONS.

CHAPTER 4.—FORM OF CIVIL ACTIONS

Single form.

SEC. 60. ONE FORM OF CIVIL ACTION ONLY.—There is in the Canal Zone but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs.

Parties to action.

SEC. 61. PARTIES TO ACTIONS, HOW DESIGNATED.—In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

Trial of special issues not made by pleadings.

SEC. 62. SPECIAL ISSUES NOT MADE BY PLEADINGS, HOW TRIED.—A question of fact not put in issue by the pleadings may be tried by the district court or a jury therein, upon an order for the trial, stating distinctly and plainly the question of fact to be tried; and such order is the only authority necessary for a trial.

TIME OF COMMENCING CIVIL ACTIONS.

CHAPTER 5.—TIME OF COMMENCING CIVIL ACTIONS

TIME OF COMMENCING ACTIONS IN GENERAL

Commencement of.

SEC. 63. COMMENCEMENT OF CIVIL ACTIONS.—Civil actions, without exception, can only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute.

CROSS REFERENCE

Post, p. 920.

Action for wrongful death must be brought within one year, see section 96.

Periods of limitation prescribed.

SEC. 64. PERIODS OF LIMITATION PRESCRIBED.—The periods prescribed for the commencement of actions are as follows:

Five years.

SEC. 65. WITHIN FIVE YEARS.—Within five years:

1. An action upon a judgment or decree of any court of the United States or of any State within the United States.

2. An action for mesne profits of real property.

Four years.

SEC. 66. WITHIN FOUR YEARS.—Within four years:

1. An action upon any contract, obligation or liability founded upon an instrument in writing.

2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated; (3) a balance

due upon a mutual, open and current account: *Provided, however*, That where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Proviso. Accounts stated.

SEC. 67. WITHIN THREE YEARS.—Within three years:

Three years.

1. An action upon a liability created by statute, other than a penalty or forfeiture.

2. An action for trespass upon or injury to real property.

3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

SEC. 68. WITHIN TWO YEARS.—Within two years:

Two years.

1. An action upon a contract, obligation, or liability not founded upon an instrument of writing, other than that mentioned in subdivision two of section 66; or an action founded upon a contract, obligation, or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance; provided, that the cause of action upon a contract, obligation, or liability, evidenced by a certificate, or abstract or guaranty of title of real property or policy of title insurance shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder.

2. An action against a marshal, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty including the nonpayment of money collected upon an execution. But this subdivision does not apply to an action for an escape.

SEC. 69. WITHIN ONE YEAR.—Within one year:

One year.

1. An action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the Government, except when the statute imposing it prescribes a different limitation.

2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the Government of the Canal Zone.

3. An action for libel, slander, assault, battery, false imprisonment, seduction, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check.

4. An action against the marshal or other officer for the escape of a prisoner arrested or imprisoned on civil process.

SEC. 70. ACTIONS FOR RELIEF NOT HEREINBEFORE PROVIDED FOR.—An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.

Actions for relief not hereinbefore provided for.

SEC. 71. WHERE CAUSE OF ACTION ACCRUES ON MUTUAL ACCOUNT.—In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

Where cause of action accrues on mutual account.

SEC. 72. NO LIMITATION TO CERTAIN ACTIONS; NOT APPLICABLE TO BANKS, ETC.—To actions brought to recover money or other property deposited with any bank, banker, trust company, building and loan association, or savings and loan society there is no limitation.

No limitation to certain actions.

Not applicable to insolvent banks, etc.

This section shall not apply to banks, bankers, trust companies, building and loan associations, and savings and loan societies which have become insolvent and are in process of liquidation and in such cases the statute of limitations shall be deemed to have commenced to run from the beginning of the process of liquidation; provided, however, nothing herein contained shall be construed so as to relieve any stockholder of any banking corporation or trust company from stockholder's liability as shall, at any time, be provided by law.

General provisions, commencing actions.

GENERAL PROVISIONS AS TO TIME OF COMMENCING ACTIONS

When commenced.

SEC. 73. WHEN AN ACTION IS COMMENCED.—An action is commenced, within the meaning of this chapter, when the complaint is filed.

Exceptions. Where defendant out of Zone.

SEC. 74. EXCEPTION, WHERE DEFENDANT IS OUT OF THE ZONE.—If, when the cause of action accrues against a person, he is out of the Canal Zone, the action may be commenced within the term herein limited, after his return to the Zone, and if, after the cause of action accrues, he departs from the Zone, the time of his absence is not part of the time limited for the commencement of the action.

Persons under disabilities.
Ante, p. 916.

SEC. 75. EXCEPTION, AS TO PERSONS UNDER DISABILITIES.—If a person entitled to bring an action, mentioned in sections 63 to 72, be, at the time the cause of action accrued, either:

1. Under the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or
4. A married woman, and her husband be a necessary party with her in commencing such action;

The time of such disability is not a part of the time limited for the commencement of the action.

Where person entitled dies before limitation expires.

SEC. 76. PROVISION WHERE PERSON ENTITLED DIES BEFORE LIMITATION EXPIRES.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within six months from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

Suits by aliens, time of war deducted.

SEC. 77. IN SUITS BY ALIENS, TIME OF WAR TO BE DEDUCTED.—When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

Where judgment reversed.

SEC. 78. PROVISION WHERE JUDGMENT HAS BEEN REVERSED.—If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his representatives, may commence a new action within one year after the reversal.

Where action stayed by injunction.

SEC. 79. PROVISION WHERE ACTION IS STAYED BY INJUNCTION.—When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Disability must exist when right of action accrued.

SEC. 80. DISABILITY MUST EXIST WHEN RIGHT OF ACTION ACCRUED.—No person can avail himself of a disability, unless it existed when his right of action accrued.

When two or more disabilities exist, etc.

SEC. 81. WHEN TWO OR MORE DISABILITIES EXIST, ETC.—When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

Acknowledgments, etc., must be in writing.

SEC. 82. ACKNOWLEDGMENT OR NEW PROMISE MUST BE IN WRITING.—No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby.

Limitation laws of States or foreign countries, effect of.

SEC. 83. LIMITATION LAWS OF STATES OR FOREIGN COUNTRIES, EFFECTS OF.—When a cause of action has arisen in a State of the United States, or in a foreign country, and by the laws thereof an action thereon can not there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in the Canal Zone, except in favor of one who has been a resident of the Zone, and who has held the cause of action from the time it accrued.

Existing causes of action not affected.

SEC. 84. EXISTING CAUSES OF ACTION NOT AFFECTED.—This chapter does not extend to actions already commenced, nor to cases where the time prescribed in any existing statute for acquiring a right or barring a remedy has fully run, but the laws now in force are applicable to such actions and cases, and are repealed subject to the provisions of this section.

"Action" includes a special proceeding.

SEC. 85. "ACTION" INCLUDES A SPECIAL PROCEEDING.—The word "action" as used in this chapter is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

CHAPTER 6.—PARTIES TO CIVIL ACTIONS

PARTIES TO CIVIL ACTIONS.

Civil actions or special proceedings between nonresidents.

SEC. 86. CIVIL ACTIONS OR SPECIAL PROCEEDINGS BETWEEN NONRESIDENTS.—No civil action or special proceeding shall be brought or proceeded with in the courts of the Canal Zone, in any case in which both of the parties, plaintiff and defendant, are alien nonresidents of the Canal Zone, and the cause of action is one which arose without the territorial limits of the Canal Zone, and the party proceeded against has no property within said territorial limits, subject to the jurisdiction of the Canal Zone courts.

Transients.

Neither shall any civil action or special proceeding be brought or proceeded with in the courts of the Canal Zone when both parties, plaintiff and defendant, though citizens of the United States, are found transiently within the limits of the Canal Zone, unless the cause of action is one arising within the said territorial limits, or the party proceeded against has property within the said limits, subject to the jurisdiction of the Canal Zone courts.

Persons having business situs, etc.

This section shall not be construed to exclude from the jurisdiction of the Canal Zone courts cases between parties who have an official or business residence within the territorial limits of the Canal Zone Government, or who reside therein for the purpose of any occupation or employment, notwithstanding that they may not have acquired a permanent residence within said territorial limits.

Action in name of party in interest.

SEC. 87. ACTION TO BE IN NAME OF PARTY IN INTEREST.—Every action must be prosecuted in the name of the real party in interest.

Assignment of a thing in action not to prejudice defense.

SEC. 88. ASSIGNMENT OF THING IN ACTION NOT TO PREJUDICE DEFENSE.—In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set off, or other defense existing at the time of, or before, notice of the assignment; but this section does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before maturity.

Executor, trustee, etc., may sue without joining beneficiary.

SEC. 89. EXECUTOR, TRUSTEE, AND SO FORTH, MAY SUE WITHOUT JOINING THE PERSONS BENEFICIALLY INTERESTED.—An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the persons for whose benefit the action is prosecuted. A person with whom, or in whose name, a contract is made for the benefit of another, is a trustee of an express trust, within the meaning of this section.

Married women as parties.

SEC. 90. MARRIED WOMEN AS PARTIES TO ACTIONS.—A married woman may be sued without her husband being joined as a party, and may sue without her husband being joined as a party in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings.

When wife may defend.

SEC. 91. WIFE MAY DEFEND, WHEN.—If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also.

Appearance of infant, etc.

SEC. 92. APPEARANCE OF INFANT, AND SO FORTH, BY GUARDIAN; MAY COMPROMISE.—When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending, in each case. A guardian ad litem may be appointed in any case, when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to represent the infant, insane, or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him. The general guardian or guardian ad litem so appearing for any infant, or insane or incompetent person in any suit shall have power to compromise the same and to agree to the judgment to be entered therein for or against his ward, subject to the approval of the court in which such suit is pending.

Power of guardian, etc., to compromise.

How guardian appointed.

SEC. 93. GUARDIAN, HOW APPOINTED.—When a guardian ad litem is appointed by the court, he must be appointed as follows:

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

2. When the infant is defendant, upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons, or if under that age, or if he neglect so to apply, then upon the application of a relative or friend of the infant, or of any other party to the action.

3. When an insane or incompetent person is a party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

Suits by unmarried female for seduction.

SEC. 94. UNMARRIED FEMALE MAY SUE FOR HER OWN SEDUCTION.—An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Suit by father, etc.

SEC. 95. FATHERS, ETC., MAY SUE FOR SEDUCTION OF DAUGHTER, ETC.—A father, or, in case of his death or desertion of his family, the mother, may prosecute as plaintiff for seduction of the daughter, and the guardian for the seduction of the ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Actions for wrongful death.

SEC. 96. ACTIONS FOR WRONGFUL DEATH.—1. Whenever by any injury done or happening within the Canal Zone the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured (or, in the case of a married woman,

have entitled her or her husband, either individually or jointly) to maintain an action and recover damages in respect thereof, the individual who or corporation, company, or association which would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, and even though the death shall have been caused under such circumstances as amount in law to a felony.

2. Every action under this section shall be brought by and in the name of the personal representatives and within one year after the death of such deceased person.

3. No action shall be maintained under this section if the person suffering injury and death, or any person for him, has recovered damages on account of such injury.

4. In an action under this section the court or jury shall award such damages as it shall deem to be a fair and just compensation assessed with reference to the pecuniary injury, resulting from such death, to the surviving spouse and the children of the deceased, and if there is neither a surviving spouse nor child, then to the parents of the deceased, and if there is no parent, then to the brothers and sisters and other blood relatives dependent upon the deceased for support.

5. Damages recovered in an action under this section shall be for the exclusive benefit of the surviving spouse and other persons enumerated in subdivision 4, and shall be distributed to them, in the order named in such subdivision, according to the laws in force in the Canal Zone applicable to the distribution of estates.

6. In no case shall recovery under this section exceed the sum of $10,000.

7. This section shall not be construed as authorizing a suit against the United States nor as modifying or repealing any other law. (Act Cong. Dec. 29, 1926, c. 19, § 7, 44 Stat. 927.) Vol. 44, p. 927.

Joinder of parties. Plaintiff.

SEC. 97. WHO MAY BE JOINED AS PLAINTIFFS.—All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this chapter.

Defendant.

SEC. 98. WHO MAY BE JOINED AS DEFENDANTS.—Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

SEC. 99. SAME.—All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative; and judgments may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Order preventing embarrassment.

SEC. 100. ORDER PREVENTING EMBARRASSMENT.—It shall not be necessary that each defendant shall be interested as to all relief prayed for, or as to every cause of action included in any proceeding against him; but the court may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

When person liable in doubt.

SEC. 101. DOUBT AS TO DEFENDANT LIABLE.—Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties.

Actions to determine conflicting claims to real property.

SEC. 102. PARTIES DEFENDANT IN AN ACTION TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY.—In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants, and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

When parties in interest joined.

SEC. 103. PARTIES IN INTEREST, WHEN TO BE JOINED; WHEN ONE OR MORE MAY SUE OR DEFEND FOR THE WHOLE.—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

When one or more may sue or defend for the whole.

Suits on commercial paper, etc.

SEC. 104. PLAINTIFF MAY SUE IN ONE ACTION THE DIFFERENT PARTIES TO COMMERCIAL PAPER OR INSURANCE POLICIES.—Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff; and all or any of them join as plaintiffs in the same action, concerning or affecting the obligation or instrument upon which they are severally liable. Where the same person is insured by two or more insurers separately in respect to the same subject and interest, such person, or the payee under the policies, or the assignee of the cause of action, or other successor in interest of such assured or payee, may join all or any of such insurers in a single action for the recovery of a loss under the several policies, and in case of judgment a several judgment must be rendered against each of such insurers according as his liability shall appear.

By tenants in common, etc.

SEC. 105. TENANTS IN COMMON, AND SO FORTH, MAY SEVER IN BRINGING OR DEFENDING ACTIONS.—All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Action, when not abated.

SEC. 106. ACTION, WHEN NOT TO ABATE BY DEATH, MARRIAGE, OR OTHER DISABILITY; PROCEEDINGS IN SUCH CASE.—An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or any disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Substitution of defendant; conflicting claims, how made.

SEC. 107. ANOTHER PERSON MAY BE SUBSTITUTED FOR THE DEFENDANT; CONFLICTING CLAIMS, HOW MADE.—A defendant, against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon such contract, or for such property, upon notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property or its value to

such person as the court may direct; and the court may, in its discretion, make the order. And whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The order of substitution may be made and the action of interpleader may be maintained, and the applicant or plaintiff be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical, but are adverse to and independent of one another.

Intervention.

SEC. 108. INTERVENTION, WHEN IT TAKES PLACE, AND HOW MADE.—At any time before trial, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it within ten days from the service thereof, if served within the Canal Zone, or within forty days if served elsewhere.

Suits against business associates.

SEC. 109. ASSOCIATES MAY BE SUED BY NAME OF ASSOCIATION.—When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

Court, when to decide controversy or to order other parties to be brought in.

SEC. 110. COURT, WHEN TO DECIDE CONTROVERSY OR TO ORDER OTHER PARTIES TO BE BROUGHT IN.—The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court must then order them to be brought in, and to that end may order amended and supplemental pleadings, or a cross-complaint to be filed, and summons thereon to be issued and served. And when, in an action for the recovery of real or personal property, or to determine conflicting claims thereto, a person, not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in, by the proper amendment.

CHAPTER 7.—PLACE OF TRIAL OF CIVIL ACTIONS

PLACE OF TRIAL OF CIVIL ACTIONS.

In general.

SEC. 111. PLACE OF TRIAL OF CIVIL ACTIONS IN GENERAL.—All actions not hereinafter otherwise provided for may be brought in the division or subdivision where the defendant or necessary party defendant may reside or be found, or in the division or subdivision where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff, except in cases where other special provision is made in this code. In case neither the plaintiff nor the defendant resides within the

Canal Zone, and the action is brought to seize or obtain title to property of the defendant within the Canal Zone, the action shall be brought in the division or subdivision where the property which the plaintiff seeks to seize or obtain title to is situated or is found.

Actions against executors, administrators, and guardians touching the performance of their official duties, and actions for account and settlement by them, and actions for the distribution of the estates of deceased persons among the heirs and distributees, and actions for the payment of legacies, shall be brought in the division in which the will was admitted to probate, or letters of administration were granted, or the guardian was appointed.

Actions to obtain possession of real property, or to recover damages for injuries to real property, or to establish any interest or right in or to real property, shall be brought in the division where such property, or some part thereof, is situated.

And in all cases process may issue from the division of the district court in which an action or special proceedings is pending, to be in force in either division, to bring in defendants and to enforce all orders and decrees of the court.

The failure of the defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objections thereto, except in the case of actions against executors, administrators, and guardians, and for the distribution of estates and payment of legacies.

Actions for divorce.

SEC. 112. ACTIONS FOR DIVORCE.—Complaints for divorce shall be filed in the division of the district court in which the plaintiff resides. (Act Cong. Sept. 21, 1922, C. 370, § 13, 42 Stat. 1008.)

Vol. 42, p. 1008.

CROSS REFERENCE

Post, p. 1135. Residence defined, see Civil Code, section 91.

Change of venue.

SEC. 113. CHANGE OF VENUE.—The district judge may order a change of venue in any civil case or special proceeding from one division of said court to the other, whenever in his opinion, in the interest of justice, such action becomes necessary. Such change of venue may be ordered upon the motion of the judge, on the application of either party or by consent of parties.

Whenever a change of venue has been ordered by the court, the clerk shall immediately make out a true transcript of all the orders made in said cause, and certify thereto under his official seal, and transmit the same with the original papers in the case to the other division of the district, and the case shall be tried therein as if it had been instituted there originally.

MANNER OF COMMENCING CIVIL ACTIONS.

CHAPTER 8.—MANNER OF COMMENCING CIVIL ACTIONS

CROSS REFERENCE

Ante, p. 923. Process may issue from one division of the district court to be in force in the other, see section 111.

Complaints.

SEC. 114. ACTIONS, HOW COMMENCED.—Civil actions in the district court of the Canal Zone are commenced by filing a complaint.

Indorsement; when summons may issue; how waived.

SEC. 115. COMPLAINT, HOW INDORSED; WHEN SUMMONS MAY BE ISSUED, AND HOW WAIVED.—The clerk must indorse on the complaint the day, month, and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued, and if the action be brought against two or more defendants, who reside in different divisions, may have a summons issued for each of such divisions at the same time. But at any time within the year after the

complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year at any time before trial.

Summons, how issued, directed, contents.

SEC. 116. SUMMONS, HOW ISSUED, DIRECTED, AND WHAT TO CONTAIN, IN GENERAL.—The summons must be directed to the defendant, signed by the clerk, and issued under the seal of the court, and must contain:

1. The names of the parties to the action, the court in which it is brought, and the division in which the complaint is filed;

2. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the Canal Zone; within forty days, if served outside of the Canal Zone;

3. A notice that, unless the defendant so appears and answers, the plaintiff will take judgment for any money or damages demanded in the complaint as arising upon contract, or will apply to the court for any other relief demanded in the complaint.

Alias summons.

SEC. 117. ALIAS SUMMONS.—If the summons is returned without being served on any or all of the defendants, or if it has been lost, the clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original, and within such time as the original might have been served if it had not been lost or returned.

Service, return of.

SEC. 118. SUMMONS, HOW SERVED AND RETURNED, IN GENERAL.—The summons may be served by the marshal, or by any other person over the age of eighteen, not a party to the action. A copy of the complaint must be served, with the summons, upon each of the defendants. When the summons is served by the marshal, it must be returned, with his certificate of its service and of the service of any copy of the complaint, where such copy is served, to the office of the clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, where such copy is served.

Service of summons.

SEC. 119. SERVICE OF SUMMONS, IN GENERAL.—The summons must be served by delivering a copy thereof as follows:

1. If suit is against a foreign corporation, or a nonresident joint stock company or association doing business within the Canal Zone: To a managing or business agent, cashier or secretary, if such there be within the Canal Zone; or to any agent authorized to accept service for it.

2. If against a minor, under the age of fourteen years, residing within the Canal Zone: To such minor, personally, and also to his father, mother, or guardian; or if there be none within the Canal Zone, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

3. If against a person residing within the Canal Zone who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed: To such person, and also to his guardian.

4. In all cases where a corporation has forfeited its right to do business in the Canal Zone, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members.

5. In all other cases to the defendant personally.

Proceedings against several defendants when not all are served.

SEC. 120. PROCEEDINGS WHERE THERE ARE SEVERAL DEFENDANTS, AND PART ONLY ARE SERVED.—When the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may

proceed against the defendants served in the same manner as if they were the only defendants.

Service by publication, in general.

SEC. 121. CASES IN WHICH SERVICE OF SUMMONS MAY BE BY PUBLICATION, IN GENERAL.—Where the person on whom service is to be made resides out of the Canal Zone; or has departed from the Zone; or can not, after due diligence, be found within the Zone; or conceals himself to avoid the service of summons; or is a corporation having no officer or other person upon whom summons may be served, who, after due diligence, can be found within the Zone, and the fact appears by affidavit to the satisfaction of the court, or the judge thereof; and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; or when it appears by such affidavit, or by the complaint on file, that it is an action which relates to or the subject of which is real or personal property in the Zone, in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part in excluding such person or corporation from any interest therein, such court or judge may make an order that the service be made by the publication of the summons.

CROSS REFERENCE

Post, p. 927. Divorce actions, service by publication, see section 126.

Manner of publication.

SEC. 122. MANNER OF PUBLICATION IN GENERAL.—The order must direct the publication to be made in such newspaper or newspapers, to be designated by the judge, as is, or are most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week for three consecutive weeks; but the last publication against a defendant residing out of the Zone, or absent therefrom, must not be less than forty days before the day on which the defendant is required to appear. In case of publication, where the residence of a nonresident or absent defendant is known, the judge must direct a copy of the summons and complaint to be forthwith deposited by the clerk in the postoffice, directed to the person to be served, at his place of residence. If the residence of the defendant is unknown, then to his last known place of residence with the request to forward if not called for in five days.

In any case where service by publication may be ordered, the court or judge, upon application of the plaintiff, shall authorize personal service upon the defendant outside of the Canal Zone. Such service shall be made by delivering to the defendant in person a true copy of the summons and the complaint, and may be made by any person not a party to or otherwise interested in the subject matter in controversy. Such service shall have only the effect of service of summons by publication. Return on such service shall be made under oath, with a notation of the time and place of service.

Proof of service, how made.

SEC. 123. PROOF OF SERVICE, HOW MADE, IN GENERAL.—Proof of the service of summons and complaint must be as follows:

1. If served by the marshal or deputy, his certificate thereof;

2. If by any other person, his affidavit thereof; or,

3. In case of publication, the certificate of the clerk of the court to which a copy of the publication shall be attached; and a certificate of the clerk showing the deposit of a copy of the summons in the post office, if the same has been deposited; or,

4. The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

CROSS REFERENCE

Proof of service in divorce actions, see section 126.

When jurisdiction of action is acquired.

SEC. 124. WHEN JURISDICTION OF ACTION IS ACQUIRED.—From the time of the service of the summons and of a copy of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties, and to have control of all the subsequent proceedings. In all cases where a corporation has forfeited its right to do business in the Canal Zone, the persons who become the trustees of the corporation and of its stockholders or members may be sued in the corporate name of such corporation in like manner as if no forfeiture had occurred and from the time of service of the summons and of a copy of the complaint in a civil action, upon one of said trustees, or of the completion of the publication when service by publication is ordered, the court is deemed to have acquired jurisdiction of all said trustees, and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him.

Process in divorce actions.

PROCESS IN DIVORCE ACTIONS

In general.

SEC. 125. PROCESS IN DIVORCE ACTIONS IN GENERAL.—The process and practice under proceedings for divorce shall be the same as in other cases in chancery except as otherwise provided in sections 112, 126, 127, 147, and 1224 of this code or in chapter 5 of the Civil Code. (Act Cong. Sept. 21, 1922, C. 370, § 16, 42 Stat. 1010; Act Cong. Dec. 29, 1926, C. 19, § 4, 44 Stat. 926.)

Post, pp. 932, 1121 1132.
Vol. 42, p. 1010; Vol. 44, p. 926.

Process and service, personal and by publication.
Post, p. 1135.

SEC. 126. SAME; PROCESS AND SERVICE, PERSONAL AND BY PUBLICATION.—(a) Upon the filing of a complaint for divorce and the affidavit required by subdivision (b), of section 91 of the Civil Code, the clerk of the district court shall issue a summons requiring the defendant to appear and answer. If the defendant can be found in the Canal Zone, such summons shall be served by delivering to the defendant in person a true copy thereof and a copy of the complaint for divorce. If the defendant can not be found in the Canal Zone, the summons shall be returned to such clerk with an indorsement thereon showing such fact.

(b) Upon application of the plaintiff, accompanied by the affidavit required by subdivision (c), if the summons has not been served as provided in subdivision (a), the court, or the judge thereof, shall enter an order directing service of a summons by publication if it appears to the satisfaction of such court or judge—

(1) That the defendant can not be found in the Canal Zone; and

(2) That a proper cause for divorce is alleged in favor of the plaintiff; and

(3) Either (A) that the husband and wife have resided together in the Canal Zone and that the defendant has gone out of the Canal Zone and willfully refuses to return, so that process can not be personally served upon such defendant; or (B) that the marriage was celebrated in the Canal Zone and that the defendant has abandoned the plaintiff and gone out of the Canal Zone in disregard of his or her marital obligations.

(c) The plaintiff shall file, with the application for an order directing service of summons by publication, an affidavit stating the present address of the defendant, except that if such address is not known to the plaintiff such affidavit shall state the last known address of the defendant, and that, after the exercise of due diligence, the

plaintiff has been unable to ascertain such present address. Such affidavit shall contain such other information as the court, or the judge thereof, may require.

(d) Upon entry of an order directing service of a summons by publication the clerk of the court shall cause such summons to be published at least once each week for three successive weeks in the newspaper designated in such order. The court, or the judge thereof, shall designate a newspaper printed and published in the Canal Zone and of general circulation therein, or a newspaper printed in English or having an English section or edition and published in the Republic of Panama and having a general circulation in the Canal Zone, which, in the opinion of the court or judge, will be most likely to give notice to the defendant. The clerk of the court shall mail a copy of the summons and a copy of the complaint, not later than ten days after the first publication of the summons, addressed to the defendant at his or her last known place of residence. The court is authorized to adopt rules prescribing the form of such summons.

(e) The clerk of the court, after the last publication of a summons, shall make certificate that the summons has been published and that a copy of the summons and complaint has been mailed as required in subdivision (d), and a copy of such summons as published shall be attached to such certificate. Such certificate and copy shall be evidence of such publication and mailing.

(f) In any case where service by publication may be ordered the court, or the judge thereof, upon application of the plaintiff, shall authorize personal service upon the defendant outside the Canal Zone. Such service shall be made by delivering to the defendant in person a true copy of the summons and a copy of the complaint for divorce, and may be made by any person not a party to or otherwise interested in the subject matter in controversy. Such service shall have only the effect of service of summons by publication. Return of such summons shall be made with a notation of the time and place of service and the fact that the defendant served is a nonresident of the Canal Zone. Such return shall be made under oath. The cost of making such service shall be borne by the party at whose instance the same was made, except that if made by any officer authorized to serve process, the actual cost of such service shall be included as a part of the cost of the case.

(g) All the facts relating to the service of summons, whether made personally or by publication, must be established to the satisfaction of the court, or the judge thereof, before any decree is entered pursuant to a complaint for divorce. (Act Cong. Sept. 21, 1922, C. 370, § 15, 42 Stat. 1009; Act Cong. Dec. 29, 1926, C. 19, § 3, 44 Stat. 924.)

Vol. 42, p. 1009; Vol. 44, p. 924.

CROSS REFERENCES

Post, p. 1136. Additional notice to defendant may be ordered in case of default, see section 95 of the Civil Code.

Post, p. 1137. No judgment for alimony unless defendant is personally served or appears, see section 101 of the Civil Code.

Post, p. 1135. Residence defined, see section 91 of the Civil Code.

Time for appearance and answer.

SEC. 127. TIME FOR APPEARANCE AND ANSWER IN SUITS FOR DIVORCE.—In no divorce proceedings shall the cause stand for trial before the expiration of the time allowed for the defendant to appear and answer. A summons issued or published under section 126 shall require the defendant to appear and answer—

(1) Within ten days after personal service thereof if such service is had in the Canal Zone;

(2) Within thirty days after personal service thereof if such service is had in the Republic of Panama;

(3) Within ninety days after personal service if such service is had outside of the Canal Zone and the Republic of Panama;

(4) Within thirty days after the first publication of summons if the defendant resides in the Canal Zone or the Republic of Panama; and

(5) Within ninety days after the first publication of summons if the defendant resides outside the Canal Zone and the Republic of Panama. (Act Cong. Sept. 21, 1922, C. 370, § 16, 42 Stat. 1010; Act Cong. Dec. 29, 1926, C. 19, § 4, 44 Stat. 926.)

Vol. 42, p. 1010; Vol. 44, p. 926.

CHAPTER 9.—PLEADINGS IN CIVIL ACTIONS

PLEADINGS IN CIVIL ACTIONS.

PLEADINGS IN GENERAL

In general.

SEC. 128. DEFINITION OF PLEADINGS.—The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

"Pleadings," defined.

SEC. 129. THIS CODE PRESCRIBES THE FORM AND RULES OF PLEADINGS.—The forms of pleading in civil actions, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this code.

Forms and rules.

SEC. 130. WHAT PLEADINGS ARE ALLOWED.—The only pleadings allowed on the part of the plaintiff are:

What pleadings allowed.

1. The complaint;
2. The demurrer to the answer;
3. The demurrer to the cross-complaint;
4. The answer to the cross-complaint.

And on the part of the defendant:

1. The demurrer to the complaint;
2. The answer;
3. The cross-complaint;
4. The demurrer to the answer to the cross-complaint.

COMPLAINT

Complaint.

SEC. 131. COMPLAINT, FIRST PLEADING.—The first pleading on the part of the plaintiff is the complaint.

First pleading.

SEC. 132. COMPLAINT, WHAT TO CONTAIN.—The complaint must contain:

Contents.

1. The title of the action, the name of the court and division in which the action is brought, and the names of the parties to the action;
2. A statement of the facts constituting the cause of action, in ordinary and concise language;
3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be stated.

SEC. 133. STATEMENT OF FACTS IN DIVORCE COMPLAINT.—In the action for divorce the complaint must set forth, among other matters, as near as can be ascertained, the following facts:

Statement of facts in divorce complaint.

(1) The State or country in which the parties were married.
(2) The date of marriage.
(3) The date of separation.
(4) The number of years from marriage to separation.
(5) The number of children of the marriage, if any, and if none, a statement of that fact.
(6) The ages of the minor children.

Causes of action which may be united.

SEC. 134. CAUSES OF ACTION WHICH MAY BE UNITED; CAUSES UNITED MUST BELONG TO ONE CLASS.—The plaintiff may unite several causes of action in the same complaint, where they all arise out of:

1. Contracts, express or implied;

2. Claims to recover damages for the withholding of specific real property, or for waste committed thereon, and the rents and profits of the same;

3. Claims to recover specific personal property, with or without damages for the withholding thereof;

4. Claims against a trustee by virtue of a contract or by operation of law;

5. Injuries to character;

6. Injuries to person;

7. Injuries to property;

8. Claims arising out of the same transaction, or transactions connected with the same subject of action, and not included within one of the foregoing subdivisions of this section.

Must belong to one class.

The causes of action so united must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated; but an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to character or to the person; provided, however, that in any action brought by the husband and wife, to recover damages caused by any injury to the wife, all consequential damages suffered or sustained by the husband alone, including loss of the services of his said wife, moneys expended and indebtedness incurred by reason of such injury to his said wife, may be alleged and recovered without separately stating such cause of action arising out of such consequential damages suffered or sustained by the husband; provided, further, that causes of action for injuries to person and injuries to property, growing out of the same tort, may be joined in the same complaint, and it is not required that they be stated separately.

Demurrer to complaint.

DEMURRER TO COMPLAINT

When defendant may demur.

SEC. 135. WHEN DEFENDANT MAY DEMUR.—The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action;

2. That the plaintiff has not legal capacity to sue;

3. That there is another action pending between the same parties for the same cause;

4. That there is a defect or misjoinder of parties plaintiff or defendant;

5. That several causes of action have been improperly united, or not separately stated;

6. That the complaint does not state facts sufficient to constitute a cause of action;

7. That the complaint is ambiguous;

8. That the complaint is unintelligible; or,

9. That the complaint is uncertain.

Demurrer must specify grounds; may be taken in part; may answer and demur at same time.

SEC. 136. DEMURRER MUST SPECIFY GROUNDS; MAY BE TAKEN TO PART; MAY ANSWER AND DEMUR AT SAME TIME.—The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it does so, it may be disregarded. It may be taken to the whole complaint, or to any of the causes of action stated therein, and the defendant may demur and answer at the same time.

Proceedings when complaint amended.

SEC. 137. WHAT PROCEEDINGS ARE TO BE HAD WHEN COMPLAINT IS AMENDED.—If the complaint is amended, a copy of the amendments must be filed, or the court may, in its discretion, require the complaint as amended to be filed, and a copy of the amendments or amended complaint must be served upon the defendants affected thereby. The defendant must answer the amendments, or the complaint as amended, within ten days after service thereof, or such other time as the court may direct, and judgment by default may be entered upon failure to answer, as in other cases.

Objection not appearing on complaint, may be taken by answer. *Ante*, p. 930.

SEC. 138. OBJECTION NOT APPEARING ON COMPLAINT, MAY BE TAKEN BY ANSWER.—When any of the matters enumerated in section 135 do not appear upon the face of the complaint, the objection may be taken by answer.

When deemed waived.

SEC. 139. OBJECTIONS, WHEN DEEMED WAIVED.—If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Answer.

ANSWER

Contents.

SEC. 140. ANSWER, WHAT TO CONTAIN.—The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant.

2. A statement of any new matter constituting a defense or counterclaim.

If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified, a general denial is sufficient, but only puts in issue the material allegations of the complaint.

Actions to recover insurance; what defendant claiming exemption must plead.

SEC. 141. ACTIONS TO RECOVER INSURANCE; WHAT DEFENDANT CLAIMING EXEMPTION MUST SET UP.—In an action to recover upon a contract of insurance wherein the defendant claims exemption from liability upon the ground that, although the proximate cause of the loss was a peril insured against, the loss was remotely caused by or would not have occurred but for a peril excepted in the contract of insurance, the defendant shall in his answer set forth and specify the peril which was the proximate cause of the loss, in what manner the peril excepted contributed to the loss or itself caused the peril insured against, and if he claim that the peril excepted caused the peril insured against, he shall in his answer set forth and specify upon what premises or at what place the peril excepted caused the peril insured against.

When counterclaim may be set up.

SEC. 142. WHEN COUNTERCLAIM MAY BE SET UP.—The counterclaim mentioned in section 140 must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;

2. In an action arising upon contract; any other cause of action arising also upon contract and existing at the commencement of the action.

When defendant omits to plead.

SEC. 143. WHEN DEFENDANT OMITS TO SET UP COUNTERCLAIM.—If the defendant omits to set up a counterclaim upon a cause arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

Counterclaim not barred by death or assignment.

SEC. 144. COUNTERCLAIM NOT BARRED BY DEATH OR ASSIGNMENT.—When cross demands have existed between persons under such circumstances that, if one had brought an action against the other, a counterclaim could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

Contents of answer, etc.

SEC. 145. ANSWER MAY CONTAIN SEVERAL GROUNDS OF DEFENSE; DEFENDANT MAY ANSWER PART AND DEMUR TO PART OF COMPLAINT.—The defendant may set forth by answer as many defenses and counterclaims as he may have. They must be separately stated, and the several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue.

Cross-complaint, in general.

SEC. 146. CROSS-COMPLAINT, IN GENERAL.—Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract, transaction, matter, happening or accident upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint. If any of the parties affected by the cross-complaint have not appeared in the action, a summons upon the cross-complaint must be issued and served upon them in the same manner as upon the commencement of an original action.

Divorce, etc., action.

SEC. 147. CROSS-COMPLAINT FOR DIVORCE AND PROCEEDINGS THEREON.—In addition to an answer, the defendant may file a cross-complaint for divorce; and when filed the court shall decree the divorce to the party legally entitled thereto. If the original complaint be dismissed after the filing of the cross-complaint, the defendant may proceed to the trial of the cross-complaint without further notice to the adverse party; and the case upon such cross-complaint shall in all things be governed by the same rules applicable to a case on an original complaint. (Act Cong. Sept. 21, 1922, C. 370, § 19, 42 Stat. 1010.)

Vol. 42, p. 1010.

Demurrer to answer.

DEMURRER TO ANSWER

By plaintiff.

SEC. 148. WHEN PLAINTIFF MAY DEMUR TO ANSWER.—The plaintiff may within ten days after the service of the answer demur thereto, or to one or more of the several defenses or counterclaims set up therein.

Grounds of.

SEC. 149. GROUNDS OF DEMURRER.—The demurrer may be taken upon one or more of the following grounds:

1. That several causes of counterclaim have been improperly joined, or not separately stated;

2. That the answer does not state facts sufficient to constitute a defense or counterclaim;

3. That the answer is ambiguous;

4. That the answer is unintelligible; or

5. That the answer is uncertain.

VERIFICATION OF PLEADINGS

Pleadings.

Verification of.

SEC. 150. VERIFICATION OF PLEADINGS.—Every pleading must be subscribed by the party or his attorney; and when the complaint is verified, or when the Government, or any officer of the Government, in his official capacity, is plaintiff, the answer must be verified, unless the admission of the truth of the complaint might subject the party to a criminal prosecution, or, unless an officer of the Government, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party, unless the parties are absent from the division where the attorney has his office, or from some cause unable to verify it, or the facts are within the knowledge of his attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof. When the Government, or any officer of the Government in his official capacity, is plaintiff, the complaint need not be verified.

Admittance of copy of instrument in complaint, etc.

SEC. 151. COPY OF WRITTEN INSTRUMENT CONTAINED IN COMPLAINT ADMITTED, UNLESS ANSWER IS VERIFIED.—When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified.

In defense.

SEC. 152. WHEN DEFENSE IS FOUNDED ON WRITTEN INSTRUMENT SET OUT IN ANSWER, ITS EXECUTION ADMITTED, UNLESS DENIED BY PLAINTIFF UNDER OATH.—When the defense to an action is founded on a written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Exceptions.

SEC. 153. EXCEPTIONS TO RULES PRESCRIBED BY TWO PRECEDING SECTIONS.—But the execution of the instrument mentioned in sections 151 and 152, is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same is, upon demand, refused an inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case.

GENERAL RULES OF PLEADING

General rules of pleading.

To be liberally construed.

SEC. 154. PLEADINGS TO BE LIBERALLY CONSTRUED.—In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.

Irrelevant answers, etc.

SEC. 155. SHAM AND IRRELEVANT ANSWERS, AND SO FORTH, MAY BE STRICKEN OUT.—Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out, upon such terms as the court may, in its discretion, impose.

Stating an account.

SEC. 156. HOW TO STATE AN ACCOUNT IN A PLEADING.—It is not necessary for a party to set forth in a pleading the items of an account therein alleged, but he must deliver to the adverse party, within five days after a demand thereof in writing, a copy of the

account, or be precluded from giving evidence thereof. The court or judge may order a further account when the one delivered is too general, or is defective in any particular.

Description of real property.

SEC. 157. DESCRIPTION OF REAL PROPERTY IN A PLEADING.—In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

Judgments, how pleaded.

SEC. 158. JUDGMENTS, HOW PLEADED.—In pleading a judgment or other determination of a court, officer, or board, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading must establish on the trial the facts conferring jurisdiction.

Conditions precedent.

SEC. 159. CONDITIONS PRECEDENT, HOW TO BE PLEADED.—In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

Statute of limitations.

SEC. 160. STATUTE OF LIMITATIONS, HOW PLEADED.—In pleading the statute of limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section —— (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

Libel and slander, how stated in complaint.

SEC. 161. LIBEL AND SLANDER, HOW STATED IN COMPLAINT.—In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it is sufficient to state, generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff must establish on the trial that it was so published or spoken.

Answer in such cases.

SEC. 162. ANSWER IN SUCH CASES.—In the actions mentioned in section 161 the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Allegations not denied, when deemed true; when deemed controverted.

SEC. 163. ALLEGATIONS NOT DENIED, WHEN TO BE DEEMED TRUE; WHEN TO BE DEEMED CONTROVERTED.—Every material allegation of the complaint, not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer in avoidance or constituting a defense or counterclaim, must, on the trial, be deemed controverted by the opposite party.

"Material allegation," defined.

SEC. 164. A MATERIAL ALLEGATION DEFINED.—A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Supplemental complaint and answer.

SEC. 165. SUPPLEMENTAL COMPLAINT AND ANSWER.—The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case occurring after the former complaint or answer.

Pleadings subsequent to complaint; filing; service of.

SEC. 166. PLEADINGS SUBSEQUENT TO COMPLAINT MUST BE FILED AND SERVED.—All pleadings subsequent to the complaint, must be filed with the clerk, and copies thereof served upon the adverse party or his attorney.

VARIANCE; MISTAKES IN PLEADING AND AMENDMENTS

Variance; mistakes in pleadings and amendments.

SEC. 167. MATERIAL VARIANCE, HOW PROVIDED FOR.—No variance between the allegation in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

How provided for. When material.

SEC. 168. IMMATERIAL VARIANCE, HOW PROVIDED FOR.—Where the variance is not material, as provided in section 167, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Immaterial.

SEC. 169. WHAT NOT TO BE DEEMED A VARIANCE.—Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance, within sections 167 and 168, but a failure of proof.

What not to be deemed a variance.

SEC. 170. AMENDMENTS OF COURSE, AND EFFECT OF DEMURRER.—Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to a complaint is overruled and there is no answer filed, the court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied, to the extent mentioned in section 163.

Amendments of course, and effect of demurrer.

Ante, p. 934.

SEC. 171. PLEADING MAY BE AMENDED.—The court may in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

Pleadings; amendment of.

RELIEF FROM JUDGMENT OR ORDER; TIME FOR APPLICATION; PROCEDURE.—And may, also, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; provided, that application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken (and provided, further, that said application must be accompanied with a copy of the answer, or other pleading proposed to be filed therein, otherwise said application shall not be granted). When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action.

Relief from judgment or order.

Application; time for making.
Procedure.

ACTION TO RECOVER PERSONAL PROPERTY.—When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond or undertaking is sued for taking the same, the officer or sureties may in their

Personal property, recovery.

answer set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.

Suing party by fictitious name.

SEC. 172. SUING A PARTY BY A FICTITIOUS NAME, WHEN ALLOWED.—When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

Immaterial errors, etc., disregarded.

SEC. 173. NO ERROR OR DEFECT TO BE REGARDED UNLESS IT AFFECTS SUBSTANTIAL RIGHTS.—The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.

Time to amend or answer, running of.

SEC. 174. TIME TO AMEND OR ANSWER, RUNNING OF.—When a demurrer to any pleading is sustained or overruled, and time to amend or answer is given, the time so given runs from the service of notice of the decision or order.

PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER 10.—PROVISIONAL REMEDIES IN CIVIL ACTIONS

Arrest and bail.

ARREST AND BAIL

Arrest in civil actions.

SEC. 175. NO PERSON TO BE ARRESTED EXCEPT AS PRESCRIBED BY THIS CODE.—No person can be arrested in a civil action, except as prescribed in this code.

When.

SEC. 176. CASES IN WHICH DEFENDANT MAY BE ARRESTED.—The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Canal Zone with intent to defraud his creditors.

2. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; or for misconduct or neglect in office, or in a professional employment, or for a willful violation of duty.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the marshal.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion, of which the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for arrest; contents.

SEC. 177. AFFIDAVIT TO OBTAIN ORDER, WHAT TO CONTAIN.—The order for the arrest of the defendant may be made whenever it appears to the judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 176. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the clerk of the court.

Security by plaintiff before order made.

SEC. 178. SECURITY BY PLAINTIFF BEFORE ORDER OF ARREST.—Before making the order, the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least $500, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court.

Order, when made; form.

SEC. 179. ORDER, WHEN MADE, AND ITS FORM.—The order may be made at the time of the issuing of the summons, or any time afterwards before judgment. It must require the marshal forthwith to arrest the defendant and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the clerk of the court.

Delivery of affidavit and order; copy to defendant.

SEC. 180. AFFIDAVIT AND ORDER TO BE DELIVERED TO THE MARSHAL, AND COPY TO DEFENDANT.—The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the marshal, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

How arrest made.

SEC. 181. ARREST, HOW MADE.—The marshal must execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant to be discharged on bail or deposit.

SEC. 182. DEFENDANT TO BE DISCHARGED ON BAIL OR DEPOSIT.—The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest.

Bail, how given.

SEC. 183. BAIL, HOW GIVEN.—The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest, that the defendant will at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender of defendant.

SEC. 184. SURRENDER OF DEFENDANT.—At any time before judgment, or within ten days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the marshal.

Arrest by bail, etc.

SEC. 185. SAME.—For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest, or, by a written authority indorsed on a certified copy of the undertaking, may empower the marshal to do so. Upon the arrest of defendant by the marshal, or upon his delivery to the

marshal by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten days thereafter.

Procedure against bail.

SEC. 186. BAIL, HOW PROCEEDED AGAINST.—If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

How exonerated.

SEC. 187. BAIL, HOW EXONERATED.—The bail are exonerated by the death of the defendant or his imprisonment in jail or in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Delivery of undertaking to plaintiff; acceptance or rejection.

SEC. 188. DELIVERY OF UNDERTAKING TO PLAINTIFF, AND ITS ACCEPTANCE OR REJECTION BY HIM.—Within the time limited for that purpose, the marshal must file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff, within ten days thereafter, may serve upon the marshal a notice that he does not accept the bail, or he is deemed to have accepted them, and the marshal is exonerated from liability. If no notice be served within ten days, the original undertaking must be filed with the clerk of the court.

Notice of justification; new undertaking, if other bail.

SEC. 189. NOTICE OF JUSTIFICATION; NEW UNDERTAKING, IF OTHER BAIL.—Within five days after the receipt of notice, the marshal or defendant may give to the plaintiff or his attorney notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before the judge or clerk of the court, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there must be a new undertaking.

Qualifications of bail.

SEC. 190. QUALIFICATIONS OF BAIL.—The qualifications of bail are as follows:

1. Each of them must be a resident of the Canal Zone.

2. Each must be worth the amount specified in the order of the arrest, or the amount to which the order is reduced, as provided in this subchapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of.

SEC. 191. JUSTIFICATION OF BAIL.—For the purpose of justification, each of the bail must attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk, in his discretion, may think proper. The examination must be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of.

SEC. 192. ALLOWANCE OF BAIL.—If the judge or clerk find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the marshal is thereupon exonerated from liability.

Deposit of money with marshal.

SEC. 193. DEPOSIT OF MONEY WITH MARSHAL.—The defendant may, at the time of his arrest, instead of giving bail, deposit with the marshal the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this subchapter, the defendant may deposit such amount instead of giving bail. In either case the

marshal must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

Payment of money into court by marshal.

SEC. 194. PAYMENT OF MONEY INTO COURT BY MARSHAL.—The marshal must, immediately after the deposit, pay the same into court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff's attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the marshal, to collect the sum deposited, as in other cases of delinquency.

Substituting bail for deposit.

SEC. 195. SUBSTITUTING BAIL FOR DEPOSIT.—If money is deposited, as provided in sections 193 and 194, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the defendant.

Money deposited, disposition of, after judgment.

SEC. 196. MONEY DEPOSITED, HOW APPLIED OR DISPOSED OF.—Where money has been deposited, if it remain on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk must, under the direction of the court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the clerk must, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

Marshal, when liable as bail; discharge from liability.

SEC. 197. MARSHAL, WHEN LIABLE AS BAIL, AND HIS DISCHARGE FROM LIABILITY.—If, after being arrested, the defendant escape or is rescued, the marshal is liable as bail; but he may discharge himself from such liability by the giving of bail at any time before judgment.

Proceedings on judgment against marshal.

SEC. 198. PROCEEDINGS ON JUDGMENT AGAINST MARSHAL.—If a judgment is recovered against the marshal upon his liability as bail, and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Motion to vacate order of arrest or reduce bail; affidavits on motion.

SEC. 199. MOTION TO VACATE ORDER OF ARREST OR REDUCE BAIL; AFFIDAVITS ON MOTION.—A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the court or judge, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

When order vacated or bail reduced.

SEC. 200. WHEN THE ORDER VACATED OR BAIL REDUCED.—If, upon such application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

Claim and delivery of personal property.

CLAIM AND DELIVERY OF PERSONAL PROPERTY

When may be claimed.

SEC. 201. DELIVERY OF PERSONAL PROPERTY, WHEN IT MAY BE CLAIMED.—The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this subchapter.

Affidavit.

SEC. 202. AFFIDAVIT AND ITS REQUISITES.—Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure;

5. The actual value of the property.

Requisition to marshal.

SEC. 203. REQUISITION TO MARSHAL TO TAKE AND DELIVER THE PROPERTY.—The plaintiff or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the marshal to take the property from the defendant.

Security on part of plaintiff, and service of order.

SEC. 204. SECURITY ON THE PART OF THE PLAINTIFF, AND PROCEEDINGS IN SERVING THE ORDER.—Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the marshal, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendants, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the marshal must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

Exception to sureties; proceedings.

SEC. 205. EXCEPTION TO SURETIES AND PROCEEDINGS THEREON, OR ON FAILURE TO EXCEPT.—The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest; and the marshal is responsible for the sufficiency of the sureties until the objection to them is either waived or until they justify. If the defendant except to the sureties, he can not reclaim the property as provided in section 206.

Redelivery, when defendant entitled to.

SEC. 206. DEFENDANT, WHEN ENTITLED TO REDELIVERY.—At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the marshal a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in section 211.

Justification of defendant's sureties.

SEC. 207. JUSTIFICATION OF DEFENDANT'S SURETIES.—The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, must justify before the judge or clerk of the court, in the same manner as upon bail on arrest; and upon such justification the marshal must deliver the property to the defendant. The marshal is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may

retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Qualification of sureties.

SEC. 208. QUALIFICATION OF SURETIES.—The qualification of sureties must be such as are prescribed by this code, in respect to bail upon an order of arrest.

Concealed property, how taken.

SEC. 209. PROPERTY, HOW TAKEN WHEN CONCEALED IN BUILDING OR INCLOSURE.—If the property, or any part thereof, be concealed in a building or inclosure, the marshal must publicly demand its delivery. If it be not delivered, he must cause the building or inclosure to be broken open, and take the property into his possession.

How kept.

SEC. 210. PROPERTY, HOW KEPT.—When the marshal has taken property, as in this subchapter provided, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his fees for taking and his necessary expenses for keeping the same.

When claimed by third person.

SEC. 211. CLAIM OF PROPERTY BY THIRD PERSON.—If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the marshal, the marshal is not bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the marshal against such claim, by an undertaking by two sufficient sureties; and no claim to such property by any other person than the defendant or his agent is valid against the marshal unless so made.

Filing of notice and affidavit.

SEC. 212. NOTICE AND AFFIDAVIT, WHEN AND WHERE TO BE FILED.—The marshal must file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court, within twenty days after taking the property mentioned therein.

Protection of plaintiff in possession.

SEC. 213. PROTECTION OF PLAINTIFF IN POSSESSION OF PROPERTY.—After the property has been delivered to the plaintiff as in this subchapter provided, the court shall, by appropriate order, protect the plaintiff in possession of said property until the final determination of the action.

Injunction.

INJUNCTION

Definition of; who may grant.

SEC. 214. INJUNCTION, WHAT IS, AND WHO MAY GRANT IT.—An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the district court, or the judge thereof, in any action brought in said court; and when granted by the judge, it may be enforced as an order of the court.

When granted.

SEC. 215. WHEN INJUNCTION MAY BE GRANTED OR MAY NOT.—An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

2. When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action;

3. When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual;

4. When pecuniary compensation would not afford adequate relief;

5. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;

6. Where the restraint is necessary to prevent a multiplicity of judicial proceedings;

7. Where the obligation arises from a trust.

When denied.

AN INJUNCTION CAN NOT BE GRANTED—

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;

2. To prevent the execution of a public statute by officers of the law for the public benefit;

3. To prevent the breach of a contract, the performance of which would not be specifically enforced;

4. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Time of granting; service of copy.

SEC. 216. INJUNCTION; TIME OF GRANTING; SERVICE OF COPY.—An injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. A copy of the complaint or of the affidavits, upon which the injunction was granted, must, if not previously served, be served therewith.

Notice. Preliminary injunction; temporary restraining order.

NOTICE.—No preliminary injunction shall be granted without notice to the opposite party; nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall appear from facts shown by affidavit or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency above specified, the matter shall be made returnable on an order requiring cause to be shown why the injunction should not be granted, on the earliest day that the business of the court will admit of, but not later than ten days from the date of such order.

Proceedings when hearing had.

PARTY OBTAINING ORDER MUST BE READY; SERVICE OF COMPLAINT, AFFIDAVITS AND POINTS AND AUTHORITIES.—When the matter first comes up for hearing the party who obtained the temporary restraining order must be ready to proceed and must have served upon the opposite party at least two days prior to such hearing, a copy of the complaint and of all affidavits to be used in such application and a copy of his points and authorities in support of such application; if he be not ready, or if he shall fail to serve a copy of his complaint, affidavits and points and authorities, as herein required, the court shall dissolve the temporary restraining order.

Defendant entitled to continuance.

DEFENDANT ENTITLED TO CONTINUANCE.—The defendant, however, shall be entitled, as of course, to one continuance for a reasonable period, if he desires it, to enable him to meet the application for the preliminary injunction.

Counter-affidavits.

COUNTER-AFFIDAVITS.—The defendant may, in response to such order to show cause, present affidavits relating to the granting of the preliminary injunction, and if such affidavits are served on the applicant at least two days prior to the hearing, the applicant shall not be entitled to any continuance on account thereof.

Precedence.

PRECEDENCE.—On the day upon which such order is made returnable, such hearing shall take precedence of all other matters on the calendar of said day, except older matter of the same character, and matters to which special precedence may be given by law. When the cause is at issue it shall be set for trial at the earliest possible date and shall take precedence of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

Injunction after answer.

SEC. 217. INJUNCTION AFTER ANSWER.—An injunction can not be allowed after the defendant has answered, unless upon notice or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or judge granting or refusing the injunction.

Security upon.

SEC. 218. SECURITY UPON INJUNCTION.—On granting an injunction, the court or judge must require, except when it is granted on the application of the Government, or a wife against her husband, a written undertaking on the part of the applicant, with sufficient sureties, to the effect that he will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled thereto. Within five days after the service of the injunction, the person enjoined may except to the sufficiency of the sureties, and unless within five days thereafter, upon notice of not less than two days to the person enjoined, such sureties, or others in their place, justify before the judge or clerk of the court at a time and place designated in such notice, the order granting the injunction must be dissolved.

Motion to vacate or modify injunction; procedure.

SEC. 219. MOTION TO VACATE OR MODIFY INJUNCTION; PROCEDURE.—If an injunction is granted without notice to the person enjoined, he may apply, upon reasonable notice to the district court or judge, to dissolve or modify the same. The application may be made upon the complaint or the affidavit on which the injunction was granted, or upon affidavit on the part of the person enjoined, with or without the answer. If the application is made upon affidavits on the part of the person enjoined, but not otherwise, the person against whom the application is made may oppose the same by affidavits or other evidence in addition to that on which the injunction was granted.

Attachment.

ATTACHMENT

When and in what cases may issue.

SEC. 220. ATTACHMENT, WHEN AND IN WHAT CASES MAY ISSUE.—The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this subchapter provided, in the following cases:

1. In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in the Canal Zone, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

2. In an action upon a contract, express or implied, against a defendant not residing in the Canal Zone.

3. In an action against a defendant, not residing in the Zone, to recover a sum of money as damages, arising from an injury to property in the Zone, in consequence of negligence, fraud, or other wrongful act.

Affidavit for.

SEC. 221. AFFIDAVIT FOR ATTACHMENT.—The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff showing:

1. The facts specified in section 220 which entitle him to the writ;

2. The amount of the indebtedness claimed, over and above all legal set-offs or counterclaims, or the amount claimed as damages; and

3. That the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant.

Undertaking on.

SEC. 222. UNDERTAKING ON ATTACHMENT; EXCEPTIONS TO SURETIES.—Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, in the sum not less than $200 and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto under section 220, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. At any time after the issuing of the attachment, but not later than five days after actual notice of the levy thereof, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two or more than five days, must justify before the judge or clerk of the court in the same manner as upon bail on arrest; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the judge or clerk must issue an order vacating the writ of attachment.

Exceptions to sureties.

Writ, to whom directed; contents.

SEC. 223. WRIT, TO WHOM DIRECTED AND WHAT TO STATE.—The writ must be directed to the marshal, and must require him to attach and safely keep all the property of such defendant within the Canal Zone not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against such defendant, the amount of which must be stated in conformity with the complaint, unless such defendant give him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand against such defendant, besides costs, or in an amount equal to the value of the property of such defendant which has been or is about to be attached; in which case to take such undertaking.

If more than one defendant.

IF MORE THAN ONE DEFENDANT.—In the event that the action is against more than one defendant, any defendant whose property has been or is about to be attached in such action may give the marshal such undertaking, and the marshal shall take the same, and such undertaking shall not subject such defendant to or be answerable for any demand against any other defendant, nor shall the marshal thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant: *Provided, however*, That such defendant, at the time of giving such undertaking to the marshal, shall file with the marshal, a statement, duly verified under oath, wherein such defendant shall aver and declare that the other defendant or defendants in the action in which said undertaking was given has or have not any interest or claim of any nature whatsoever in or to said property. Such statement must further contain the character of such defendant's title and the manner in which he acquired title to such attached property: *Provided further*, That before said attachment shall be released, the undertaking required by this section must be approved by the judge or, in the absence or disability of the judge, by the clerk of the court.

Provisos.
Sworn statement to be filed.

Interest in property.

Judicial approval.

Shares of stock, etc., attachment of.

SEC. 224. SHARES OF STOCK AND DEBTS DUE DEFENDANT, HOW ATTACHED AND DISPOSED OF.—The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in the Canal Zone of such defend-

ant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Attachment of real and personal property.

SEC. 225. HOW REAL AND PERSONAL PROPERTY SHALL BE ATTACHED.—The marshal to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in section 223 be not given, as follows:

1. Real property must be attached, by filing with the registrar of property a copy of the writ, together with a description of the property attached, and a notice that it is attached; and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one; if not, then by posting the same in a conspicuous place on the property attached.

2. Real property, or an interest therein, belonging to the defendant, and held by any other person, must be attached, by filing with the registrar of property a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the Canal Zone, or at the residence of either, if within the Canal Zone, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The registrar must index such attachment when filed, in the names, both of the defendant and of the person by whom the property is held.

3. Personal property, capable of manual delivery, must be attached by taking it into custody.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ.

5. Debts and credits and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ, except in the case of attachment of growing crops, a copy of the writ, together with a description of the property attached, and a notice that it is attached, shall be recorded the same as in the attachment of real property.

Attachment lien on real property.

SEC. 226. ATTACHMENT LIEN ON REAL PROPERTY.—The lien of the attachment on real property attaches and becomes effective upon the filing of a copy of the writ, together with a description of the property attached and a notice that it is attached, with the registrar of property: *Provided, however*, That in event that the marshal does not complete the execution of said writ in the manner prescribed in section 225 of this code within a period of fifteen days next following said filing in the registrar's office then said lien shall cease at the expiration of said period of fifteen days.

Proviso. When lien to cease.

Expiration; extension.

EXPIRATION; EXTENSION.—The attachment whether heretofore levied or hereafter to be levied shall be a lien upon all real property attached for a period of three years after the date of levy unless sooner released or discharged as provided in this subchapter, by

dismissal of the action or by entry and docketing of judgment in the action. At the expiration of three years the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred: *Provided*, That upon motion of a party to the action, made not less than five nor more than sixty days before the expiration of said period of three years, the court in which the action is pending may extend the time of said lien for a period not exceeding two years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the filing, before the expiration of the existing lien, of a certified copy of the order with the registrar of property. The lien may be extended from time to time in the manner herein prescribed.

Proviso. Motion for extension.

Attorney to give written instructions to marshal what to attach.

SEC. 227. ATTORNEY TO GIVE WRITTEN INSTRUCTIONS TO MARSHAL WHAT TO ATTACH.—Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the marshal must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Garnishment, when garnishee liable to plaintiff.

SEC. 228. GARNISHMENT, WHEN GARNISHEE LIABLE TO PLAINTIFF.—All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in sections 226 and 227, shall be, unless such property be delivered up or transferred, or such debts be paid to the marshal, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Citation to garnishee to appear.

SEC. 229. CITATION TO GARNISHEE TO APPEAR BEFORE THE COURT OR JUDGE.—Any person owing debts to the defendant, or having in his possession or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or in case of the absence or disability of the judge by the clerk of the court, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property, capable of manual delivery, to be delivered to the marshal on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory, how made.

SEC. 230. INVENTORY, HOW MADE; PARTY REFUSING TO GIVE MEMORANDUM MAY BE COMPELLED TO PAY COSTS.—The marshal must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

Payment of costs by party refusing to give memorandum.

Perishable property, how sold; disposition of proceeds.

SEC. 231. PERISHABLE PROPERTY, HOW SOLD; DISPOSITION OF PROCEEDS; ACCOUNTS TO BE COLLECTED WITHOUT SUIT.—If any of the property attached be perishable, the marshal must sell the same in the manner in which such property is sold on execution. The proceeds, and

other property attached by him, must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The marshal's receipt is a sufficient discharge for the amount paid.

Collection of accounts.

SEC. 232. PROPERTY ATTACHED MAY BE SOLD AS UNDER EXECUTION, IF THE INTERESTS OF THE PARTIES REQUIRE.—Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court or the judge thereof that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

Sale of attached property.

SEC. 233. WHEN PROPERTY CLAIMED BY A THIRD PARTY, HOW TRIED.—If any personal property attached be claimed by a third person as his property, the same rules shall prevail as to the contents and making of said claim, and as to the holding of said property, as in case of a claim after levy upon execution, as provided for in section 357.

Claims of third party, how tried.

Post, p. 970.

SEC. 234. IF PLAINTIFF OBTAINS JUDGMENT, HOW SATISFIED.—If judgment be recovered by the plaintiff, the marshal must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

Satisfaction of judgment.

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

SEC. 235. WHEN THERE REMAINS A BALANCE DUE, HOW COLLECTED.—If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the marshal must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the marshal, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Collection of balance due.

SEC. 236. WHEN SUITS MAY BE COMMENCED ON THE UNDERTAKING.—If the execution be returned, unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section 223 or section 239, or he may proceed, as in other cases, upon the return of an execution.

When suits may be commenced on the undertaking.

Ante, p. 944.

Post, p. 948.

SEC. 237. IF DEFENDANT RECOVERS JUDGMENT, WHAT THE MARSHAL IS TO DELIVER.—If the defendant recovers judgment against the plaintiff and no appeal is perfected and undertaking executed, any undertaking received in the action, all the proceeds of sales and money collected by the marshal, and all the property attached remaining in the marshal's hands, must be delivered to the defendant or his

If defendant recovers judgment, what marshal to deliver.

agent, the order of attachment be discharged, and the property released therefrom.

Proceedings to release attachments.

SEC. 238. PROCEEDINGS TO RELEASE ATTACHMENTS.—Whenever any defendant has appeared in the action, such defendant may, upon reasonable notice to the plaintiff, apply to the district court, or to the judge thereof, for an order to discharge the attachment wholly or in part; and upon the execution of the undertaking mentioned in section 555, an order may be made releasing from the operation of the attachment, any or all of the property of such defendant attached; and all of the property so released and all of the proceeds of the sales thereof, must be delivered to such defendant upon the justification of the sureties on the undertaking, if required by the plaintiff. Such justification must take place within five days after the notice of the filing of such undertaking.

Requirements by court for release of attachment.

SEC. 239. REQUIREMENTS BY COURT FOR RELEASE OF ATTACHMENT.—Before making such order, the court or judge must require an undertaking on behalf of such defendant, by at least two sureties, to the effect that in case the plaintiff recovers judgment in the action against the defendant, by whom or in whose behalf such undertaking shall be given, such defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of any judgment in such action against said defendant, or in default thereof, that such defendant and sureties will, on demand, pay to the plaintiff the full value of the property released not exceeding the amount of such judgment against such defendant. The court or judge making such order may fix the sum for which the undertaking must be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or judge and the property attached can not be released from the attachment without their justification if the same is required.

Motion to discharge attachment; grounds.

SEC. 240. WHEN A MOTION TO DISCHARGE ATTACHMENT MAY BE MADE, AND UPON WHAT GROUNDS.—The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply, on motion, upon reasonable notice to the plaintiff, to the court, or to the judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

Motion made on affidavit.

SEC. 241. WHEN MOTION MADE ON AFFIDAVIT, IT MAY BE OPPOSED BY AFFIDAVIT.—If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

When writ must be discharged.

SEC. 242. WHEN WRIT MUST BE DISCHARGED.—If upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued it must be discharged; provided that such attachment shall not be discharged if at or before the hearing of such application, the writ of attachment, or the affidavit, or undertaking upon which such attachment was based shall be amended and made to conform to the provisions of this subchapter.

When returned.

SEC. 243. WHEN WRIT TO BE RETURNED.—The marshal must return the writ of attachment with the summons, if issued at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the registrar of property.

Release of real property from attachment.

SEC. 244. RELEASE OF REAL PROPERTY FROM ATTACHMENT.—An attachment as to any real property may be released by a writing signed by the plaintiff, or his attorney, or the officer who levied the writ and acknowledged in the manner provided in chapter 22 of the Civil Code; and upon the filing of such release, it is the duty of the registrar of property to note the same on the record of the copy of the writ on file in his office. Such attachment may also be released by an entry in the margin of the record thereof, in the registrar's office, in the manner provided for the discharge of mortgages under section 1349 of the Civil Code.

Post, p. 1164.

Attachment of defendant's interest in estate of decedent.

SEC. 245. ATTACHMENT OF INTEREST OF DEFENDANT IN ESTATE OF DECEDENT.—The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that said interest is attached. Such attachment shall not impair the powers of the representative over the property for the purposes of administration. A copy of said writ of attachment and of said notice shall also be filed in the office of the clerk of the court in which said estate is being administered and the personal representative shall report such attachment to the court when any petition for distribution is filed, and in the decree made upon such petition distribution shall be ordered to such heir, legatee, or devisee, but delivery of such property shall be ordered to the officer making the levy subject to the claim of such heir, legatee, or devisee, or any person claiming under him. The property shall not be delivered to the officer making the levy until the decree distributing such interest has become final.

Receivers.

RECEIVERS

Appointment of.

SEC. 246. APPOINTMENT OF RECEIVERS.—A receiver may be appointed by the district court in an action pending therein, or by the judge of said court.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Appointment, upon dissolution of corporation.

SEC. 247. APPOINTMENT OF RECEIVERS UPON DISSOLUTION OF CORPORATION.—Upon the dissolution of any corporation having its principal place of business in the Canal Zone, the district court, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over among the stockholders or members.

Restrictions; ex parte application, undertaking on.

SEC. 248. RECEIVER, RESTRICTIONS ON APPOINTMENT; EX PARTE APPLICATION, UNDERTAKING ON.—No party, or attorney of a party, or person interested in an action, or related to the judge of the court by consanguinity or affinity within the third degree, can be appointed receiver therein without the written consent of the parties, filed with the clerk. If a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause; and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

Oath and undertaking of receiver.

SEC. 249. OATH AND UNDERTAKING OF RECEIVER.—Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with two or more sureties, approved by the court or judge, execute an undertaking to the Government of the Canal Zone in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein.

Powers.

SEC. 250. POWERS OF RECEIVERS.—The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Investment of funds.

SEC. 251. INVESTMENT OF FUNDS.—Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made, except upon the consent of all the parties to the action.

Notice of unclaimed funds in receiver's hands; disposition of.

SEC. 252. NOTICE OF UNCLAIMED FUNDS IN RECEIVER'S HANDS; DISPOSITION OF.—A receiver having any funds in his hands belonging to a person whose whereabouts are unknown to him, shall, before receiving his discharge as such receiver, publish a notice, in one or more newspapers of general circulation in the Canal Zone, at least once a week for four consecutive weeks, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of such owner and the amount of such unclaimed funds. Any funds remaining in his hands unclaimed for thirty days after the date of the last publication of such notice, shall be reported to the court, and upon order of the court, all such funds must be paid to the collector of the Panama Canal accompanied with a copy of the order, which must set forth the facts required in the notice herein provided. Such funds shall be paid out by the collector to the owner thereof or his order in such manner and upon such terms as the court may direct.

All costs and expenses connected with such advertising shall be paid out of the funds the whereabouts of whose owners are unknown.

DEPOSITS IN COURT; HANDLING OF FUNDS BY CLERK

Deposits in court; handling funds by clerk.

Court order.

SEC. 253. DEPOSIT IN COURT.—When it is admitted by the pleadings, or shown upon the examination of a party to the action, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Enforcement.

SEC. 254. MANNER OF ENFORCING THE ORDER.—Whenever, in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, beside punishing the disobedience, may make an order requiring the marshal to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

Deemed in registry of court.

SEC. 255. MONEY DEPOSITED DEEMED IN REGISTRY OF COURT.—Every sum of money deposited with a clerk of said court, by or for the use of any party, upon a judgment of the court or in a pending action or proceeding by virtue of the law or by direction of the court, as soon as deposited with the clerk, shall be deemed to be in the registry of the court.

Sums over $200; disbursement; record of.

SEC. 256. CLERK TO DEPOSIT SUMS OVER $200 IN DEPOSITORY; DISBURSEMENT; RECORD OF RECEIPT AND DISBURSEMENT.—The clerk shall deposit in some depository designated by the judge of said court, in the name of the "District Court, Canal Zone," every sum of money deposited in the registry of the court which exceeds $200, as soon as the same is received; and such money may thereafter be paid out only on a check, voucher, or order of the court, or the judge thereof, countersigned by a clerk of the court. The clerk in each division of the district court shall make a record showing the date of receipt, the amount received, from whom received, and the case in which any such money is deposited in the registry of the court; and the date, amount, and to whom the same was paid out.

Maintenance of general deposit account; interest; commission.

SEC. 257. MAINTENANCE OF GENERAL DEPOSIT ACCOUNT; INTEREST; COMMISSION; DEPOSIT OF FUNDS OF $200 OR LESS.—The clerk shall maintain a general deposit account in a designated depository in which shall be deposited every cash fund exceeding $200 deposited in the registry of the court. Interest earned on such general account shall be retained by the clerk as his commission for receiving and caring therefor and shall be accounted for by him as fees of his office. No commission shall be charged by the clerk for handling any fund of $200 or less.

Deposit of funds of $200 or less.

Deposit in bank.

In any case, however, where any such fund is likely to remain in the registry of the court for six months or more, and where the parties so stipulate or the court so directs, such fund shall be deposited in a designated bank in a savings account at interest. The clerk's commission for caring for such fund in such case shall be paid only out of interest earned thereon, to the amount of one-fourth of such interest. The remainder of such interest shall be deemed a part of such fund and shall be paid out on order or decree of the court according to the exigency of the case.

Designation of depositories.

SEC. 258. JUDGE TO DESIGNATE ONE OR MORE DEPOSITORIES.—The judge of the district court shall designate one or more depositories in which money deposited in the registry of the court shall be deposited by the clerks.

"Clerk" to include assistant and acting clerks.

SEC. 259. "CLERK" DEFINED TO INCLUDE ASSISTANT AND ACTING CLERKS.—The word "clerk" as used in sections 255 to 258 shall include the clerk of the district court, the assistant clerks thereof, and any acting clerk when performing the duties of the clerk or assistant clerk when they or any of them are absent on account of illness or vacation, or are unable to act from any cause.

Disposition of unclaimed funds.

SEC. 260. DISPOSITION OF UNCLAIMED FUNDS BY CLERK.—All moneys, securities, or funds now in the hands or under the possession or control of the clerk of the district court where, for a period of four years or more, no order has been made, or no step or proceeding has been had or taken in the case, action, or proceeding in, by, or through which said moneys, securities, or funds may have been deposited or left with said clerk or his predecessors in office, and where no valid claim has been made upon or for any such moneys, securities, or funds for a period of four years or more, and where the owner or ownership of said moneys, securities, or funds is unknown or where such owner refuses to accept the same, shall be held by said clerk and his successor in office until one year after the enactment of this code, unless sooner demanded by and turned over to the legal owner or owners thereof.

One year after the enactment of this code, the clerk of the district court having in his possession any such moneys, securities, or funds shall turn the same over to the collector of the Panama Canal to be held and disposed of as hereinafter provided.

Whenever the clerk of the district court has in his hands for a period of two years or more any fund or moneys belonging to any person or persons, which funds or moneys he has been unable to disburse to such person or persons because of his inability to locate them, or because of their refusal to accept the same, the said clerk shall upon order of the court turn the same over to the collector of the Panama Canal to be held and disposed of as hereinafter provided.

Any person claiming to be entitled to any amount so deposited with the collector may, within five years after such deposit, petition the court or judge for an order directing payment to the said claimant. A copy of such petition shall be served on the collector and thereafter no such amount shall be covered into the Treasury of the United States, as hereinafter directed, until so ordered by the court.

If no one claims the amount, as herein provided, or if a claim be made and disallowed and the court so directs, such amount devolves to the United States and shall be covered into the Treasury by the collector as miscellaneous receipts.

TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER 11.—TRIAL AND JUDGMENT IN CIVIL ACTIONS

General.

JUDGMENT IN GENERAL

"Judgment," defined.

SEC. 261. JUDGMENT DEFINED.—A judgment is the final determination of the rights of the parties in an action or proceeding.

May be for or against one of the parties.

SEC. 262. JUDGMENT MAY BE FOR OR AGAINST ONE OF THE PARTIES.—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Against one party; action may proceed as to others.

SEC. 263. JUDGMENT MAY BE AGAINST ONE PARTY, AND ACTION PROCEED AS TO OTHERS.—In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

SEC. 264. THE RELIEF TO BE AWARDED TO THE PLAINTIFF.—The relief granted to the plaintiff, if there be no answer, can not exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue. Relief granted plaintiff.

SEC. 265. DISMISSAL OF ACTIONS AND ENTRY OF NONSUIT.—An action may be dismissed, or a judgment of nonsuit entered, in the following cases: Dismissal of actions; entry of nonsuit.

1. By the plaintiff, by written request to the clerk, filed with the papers in the case, at any time before the trial, upon payment of his costs; provided, a counterclaim has not been set up, or affirmative relief sought by the cross-complaint or answer of the defendant. If a provisional remedy has been allowed, the undertaking must thereupon be delivered by the clerk to the defendant, who may have his action thereon;

2. By either party, upon the written consent of the other;

3. By the court, when either party fails to appear on the trial, and the other party appears and asks for the dismissal;

4. By the court, when upon the trial and before the final submission of the case, the plaintiff abandons it;

5. By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient case.

But no dismissal mentioned in subdivisions 1 and 2 hereof shall be entered unless upon written consent of his attorney of record, or if said consent is not obtained, upon order of the court, after notice to the attorney.

The dismissals mentioned in said subdivisions 1 and 2 hereof, when written consent of the attorney of record of the party requesting the dismissals are filed, may be made by entry in the clerk's register.

The dismissals mentioned in subdivisions three, four, and five of this section must be made by orders of the court entered upon the minutes thereof, and are effective for all purposes when so entered; but the clerk of the court must note such orders in his register of actions in the case.

SEC. 266. DISMISSAL OF ACTION FOR FAILURE TO ISSUE SUMMONS, WHEN.—No action heretofore or hereafter commenced shall be further prosecuted, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced must be dismissed by the court in which the same shall have been commenced, on its own motion, or on motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have issued within one year, and all such actions must be in like manner dismissed, unless the summons shall be served and return thereon made within three years after the commencement of said action. But all such actions may be prosecuted, if appearance has been made by the defendant or defendants, within said three years in the same manner as if summons had been issued and served; provided, that, except in actions to partition or to recover possession of, or to enforce a lien upon, or to determine conflicting claims to, real or personal property, no dismissal shall be had under this section as to any defendant because of the failure to serve summons on him during his absence from the zone, or while he has secreted himself within the zone to prevent the service of summons on him. Failure to issue summons, when.

SEC. 267. ALL OTHER JUDGMENTS ARE ON THE MERITS.—In all cases other than those mentioned in sections 265, 266, and 268, judgment must be rendered on the merits. Judgments on merits.

SEC. 268. DISMISSAL OF ACTIONS.—The court may in its discretion dismiss any action for want of prosecution on its own motion or on motion of the defendant and after due notice to the plaintiff, when- Dismissal of actions.

ever plaintiff has failed for two years after answer filed to bring such action to trial.

Judgment upon failure to answer.

JUDGMENT UPON FAILURE TO ANSWER

If defendant fails.

SEC. 269. JUDGMENT IF DEFENDANT FAILS TO ANSWER.—Judgment may be had, if the defendant fails to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if the defendant has been personally served and no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately thereafter enter judgment for the amount demanded in the complaint, including the costs, against the defendant, or against one or more of several defendants, in the cases provided for in section 120.

2. In other actions, if the defendant has been personally served and no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted, the clerk must enter the default of the defendant; and thereafter the plaintiff may apply to the court for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account is involved, by a reference as above provided.

3. In all actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court must thereupon require proof to be made of the allegations of the complaint; and if the defendant is not a resident of the Zone, must require the plaintiff, or his agent, to be examined, on oath, respecting any payments that have been made to the plaintiff, or to anyone for his use, on account of any demand mentioned in the complaint, and may render judgment for the amount which he is entitled to recover; provided, that, in actions involving merely the possession of real property where the complaint is verified and shows by proper allegations that no party to the action claims title to the real property involved, either by accession, transfer, will, or succession but only the possession thereof, the court may render judgment upon proof of occupancy by plaintiff and ouster by defendant.

Issues; mode of trial and postponements.

ISSUES; MODE OF TRIAL AND POSTPONEMENTS

"Issue," defined.

SEC. 270. ISSUE DEFINED, AND THE DIFFERENT KINDS.—Issues arise upon the pleadings when a fact or a conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

Kinds.

1. Of law; and,

2. Of fact.

How raised. Issue of law.

SEC. 271. ISSUE OF LAW, HOW RAISED.—An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact.

SEC. 272. ISSUE OF FACT, HOW RAISED.—An issue of fact arises—

1. Upon a material allegation in the complaint controverted by the answer; and,

2. Upon new matters in the answer, except an issue of law is joined thereon.

How tried. Issue of law.

SEC. 273. ISSUE OF LAW, HOW TRIED.—An issue of law must be tried by the court, unless it is referred upon consent.

Issue of fact.

SEC. 274. ISSUES OF FACT, HOW TRIED.—Issues of fact shall be tried by the court, except where a jury is demanded as provided in sections 279 and 280 or a reference is ordered as provided in this code.

Causes to be calendared, etc.

SEC. 275. CLERK MUST ENTER CAUSES ON THE CALENDAR, TO REMAIN UNTIL DISPOSED OF; WHEN MAY BE RESTORED.—The clerk must enter causes upon the calendar of the court according to the date of issue. Causes once placed on the calendar must remain upon the calendar until finally disposed of; provided, that causes may be dropped from the calendar by consent of parties, and may be again restored upon notice.

Parties or court may bring issue to trial.

SEC. 276. PARTIES OR COURT MAY BRING ISSUE TO TRIAL.—Either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise direct, may proceed with his case, and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof must first be made to the satisfaction of the court that the adverse party has had five days' notice of such trial. The court or judge may on its own motion bring an issue to trial or to a hearing.

Motion to postpone; when can be made.

SEC. 277. MOTION TO POSTPONE A TRIAL FOR ABSENCE OF EVIDENCE OR A MATERIAL WITNESS.—A motion to postpone a trial on the ground of the absence of evidence can only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may require the moving party, where application is made on account of the absence of a material witness, to state upon affidavit the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

Depositions of witnesses in cases of adjournment.

SEC. 278. IN CASES OF ADJOURNMENT A PARTY MAY HAVE THE TESTIMONY OF ANY WITNESS TAKEN.—The party obtaining a postponement of a trial in the district court must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the judge or clerk of the court, or before such notary public as the court may indicate, which must accordingly be done; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witnesses were produced.

Trial by jury.

TRIAL BY JURY

RIGHT TO JURY TRIAL

Right to.

SEC. 279. RIGHT TO TRIAL BY JURY.—A jury shall be had, on the demand of either party, in any civil case at law originating in the district court. (Acts Cong. Aug. 24, 1912, c. 390, § 8, 37 Stat. 565; Sept. 21, 1922, c. 370, § 2, 42 Stat. 1005; Dec. 29, 1926, c. 19, § 1, 44 Stat. 924.)

Vol. 37, p. 565; Vol. 42, p. 1005; Vol. 44, p. 924.

Request for.

SEC. 280. REQUEST FOR JURY.—In the trial of any civil cause where a jury trial may be demanded, if either party shall desire a jury, request therefor must be made at the time such cause is assigned for trial.

Formation of.

FORMATION OF JURY

Peremptory challenges, civil cases.

SEC. 281. PEREMPTORY CHALLENGES, CIVIL CASES.—Either party may challenge the jurors, but where there are several parties on either side, they must join in the challenge before it can be made. The challenges are to individual jurors and are either peremptory or for cause. Each party is entitled to four peremptory challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff, and each party shall be entitled to have the panel full before exercising any peremptory challenge.

Challenges for cause.

SEC. 282. CHALLENGES OF JURORS FOR CAUSE.—Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed to render a person competent as a juror.

2. Consanguinity or affinity within the fourth degree to any party, or to an officer of a corporation, which is a party;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, or debtor and creditor, to either party, or to an officer of a corporation which is a party, or being a member of the family of either party; or a partner in business with either party; or surety on any bond or obligation for either party, or being the holder of bonds or shares of the capital stock of a corporation which is a party.

4. Having served as a juror in a civil action or been a witness on a previous trial between the same parties, for the same cause of action; or having served as a juror within one year previously in any civil action or proceeding in which either party was plaintiff or defendant.

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action.

6. Having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or of some of them.

7. The existence of a state of mind in the juror evincing enmity against or bias to either party.

8. That he is a party to an action pending in the court for which he is drawn and which action is set for trial before the panel of which he is a member.

How tried.

SEC. 283. CHALLENGES, HOW TRIED.—Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

Jury to be sworn.

SEC. 284. JURY TO BE SWORN.—As soon as the jury is completed, an oath must be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ———, the plaintiff, and ———, defendant, and a true verdict render according to the evidence.

Conduct of trial.

CONDUCT OF TRIAL

Order of proceedings on trial.

SEC. 285. ORDER OF PROCEEDING ON TRIAL.—When the jury has been sworn, the trial must proceed in the following order, unless the judge, for special reasons, otherwise directs:

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part;

2. The defendant may then open his defense, and offer his evidence in support thereof;

3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument;

5. If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument;

6. The court may then charge the jury.

Charge to the jury; writing required.

SEC. 286. CHARGE TO THE JURY; COURT MUST FURNISH, IN WRITING, UPON REQUEST, THE POINTS OF LAW CONTAINED THEREIN.—In charging the jury the court may state to them all matters of law which it thinks necessary for their information in giving their verdict; and, if it state the testimony of the case, it must inform the jury that they are the exclusive judges of all questions of fact. The court must furnish to either party, at the time, upon request, a statement in writing of the points of law contained in the charge, or sign, at the time, a statement of such points prepared and submitted by the counsel of either party.

Special instructions.

SEC. 287. SPECIAL INSTRUCTIONS.—Where either party asks special instructions to be given to the jury, the court must either give such instruction, as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

View of premises by jury.

SEC. 288. VIEW BY JURY OF THE PREMISES.—When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Admonition on separation of jury.

SEC. 289. ADMONITION WHEN JURY PERMITTED TO SEPARATE.—If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

Papers jury may take upon retiring.

SEC. 290. JURY MAY TAKE WITH THEM CERTAIN PAPERS.—Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Deliberation of jury.

SEC. 291. DELIBERATION OF JURY, HOW CONDUCTED.—When the case is finally submitted to the jury, they may decide in court or retire for deliberation; if they retire, they must be kept together in some convenient place, under charge of an officer, until at least three-fourths of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they or three-fourths of them are agreed upon a verdict, and he must not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Return to court for further instructions.

SEC. 292. MAY COME INTO COURT FOR FURTHER INSTRUCTIONS.—After the jury have retired for deliberation, if there be a disagreement

between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the parties or counsel.

Proceedings if juror becomes sick.

SEC. 293. PROCEEDINGS IF JUROR BECOMES SICK.—If, after the impaneling of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors with the consent of the parties, or another juror may be sworn and the trial begin anew or the jury may be discharged and a new jury then or afterwards impaneled.

When verdict prevented; cause again tried.

SEC. 294. WHEN PREVENTED FROM GIVING VERDICT, THE CAUSE MAY BE AGAIN TRIED.—In all cases where the jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

Adjournment during absence of jury; sealed verdict.

SEC. 295. WHILE JURY ARE ABSENT, COURT MAY ADJOURN FROM TIME TO TIME; SEALED VERDICT.—While the jury are absent the court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess or adjournment for the day.

Verdict, how declared; form.

SEC. 296. VERDICT, HOW DECLARED; FORM OF; POLLING THE JURY.—When the jury, or three-fourths of them, have agreed upon a verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman; the verdict must be in writing, signed by the foreman, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict; if upon such inquiry or polling, more than one-fourth of the jurors disagree thereto, the jury must be sent out again, but if no such disagreement be expressed, the verdict is complete and the jury discharged from the case.

Polling jury.

Informal verdict; proceedings.

SEC. 297. PROCEEDINGS WHEN VERDICT IS INFORMAL.—When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

The verdict.

THE VERDICT

"General" and "special," defined.

SEC. 298. GENERAL AND SPECIAL VERDICTS DEFINED.—The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

When may be rendered.

SEC. 299. WHEN A GENERAL OR SPECIAL VERDICT MAY BE RENDERED.—In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all, or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particu-

lar questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered upon the minutes. Where a special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court must give judgment accordingly.

Actions for recovery of money or on establishing counterclaim.

SEC. 300. VERDICT IN ACTIONS FOR RECOVERY OF MONEY OR ON ESTABLISHING COUNTERCLAIM.—When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counterclaim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

Actions for recovery of specific personal property.

SEC. 301. VERDICT IN ACTIONS FOR THE RECOVERY OF SPECIFIC PERSONAL PROPERTY.—In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or if being in favor of defendant, they also find that he is entitled to a return thereof, must find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry of verdict.

SEC. 302. ENTRY OF VERDICT.—Upon receiving a verdict, an entry must be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

Judgment notwithstanding verdict.

SEC. 303. JUDGMENT NOTWITHSTANDING VERDICT.—When a motion for a directed verdict, which should have been granted, has been denied and a verdict rendered against the moving party, the court, at any time before the entry of judgment, either of its own motion or on motion of the aggrieved party, shall render judgment in favor of the aggrieved party notwithstanding the verdict.

New trial.

A motion for judgment notwithstanding such verdict may also be made in the alternative form, asking therefor and reserving, if that be denied, the right to apply for a new trial. If the motion for a directed verdict or for judgment notwithstanding the verdict be denied, the trial court on motion for new trial may order judgment to be so entered when it appears from the whole evidence that a verdict should have been so directed at the trial.

Trial by court.

TRIAL BY COURT

Decision; form; filing.

SEC. 304. UPON TRIAL BY COURT, DECISION TO BE IN WRITING AND FILED WITHIN THIRTY DAYS.—Upon the trial of a question of fact by the court, its decision must be given in writing and filed with the clerk within thirty days after the cause is submitted for decision.

Statement of facts found and conclusions of law; judgment on.

SEC. 305. FACTS FOUND AND CONCLUSIONS OF LAW MUST BE SEPARATELY STATED; JUDGMENT ON.—In giving the decision, the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

Waiving findings of fact.

SEC. 306. WAIVING FINDINGS OF FACT.—Findings of fact may be waived by several parties to an issue of fact:

1. By failing to appear at the trial;
2. By consent in writing filed with the clerk;
3. By oral consent in open court, entered in the minutes.

In all cases where the court directs a party to prepare findings, a copy of said proposed findings shall be served upon all the parties

to the action at least five days before findings shall be signed by the court, and the court shall not sign any findings therein prior to the expiration of such five days.

Proceedings after determining issue of law.

SEC. 307. PROCEEDINGS AFTER DETERMINATION OF ISSUE OF LAW.—On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of section 269, upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the court to complete the judgment, a reference may be ordered, as in that section provided.

References and trials by referees.

REFERENCES AND TRIALS BY REFEREES

Reference ordered upon agreement of parties, in what cases.

SEC. 308. REFERENCE ORDERED UPON AGREEMENT OF PARTIES, IN WHAT CASES.—A reference may be ordered upon the agreement of the parties filed with the clerk, or entered in the minutes:

1. To try any or all of the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;

2. To ascertain a fact necessary to enable the court to determine an action or proceeding.

Ordered on motion in what cases.

SEC. 309. REFERENCE ORDERED ON MOTION, IN WHAT CASES.—When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein;

2. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;

3. When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action;

4. When it is necessary for the information of the court in a special proceeding.

Objection to appointment of referee. When may offer; grounds of.

SEC. 310. A PARTY MAY OBJECT; GROUNDS OF OBJECTION.—A party may object to the appointment of any person as referee, on one or more of the following grounds:

1. A want of any of the qualifications prescribed to render a person competent as a juror;

2. Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to the judge of the court in which the appointment shall be made;

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party;

4. Having served as a juror or been a witness on any trial between the same parties for the same cause of action;

5. Interest on the part of such person in the event of the action, or in the main question involved in the action;

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action;

7. The existence of a state of mind in such person evincing enmity against or bias to either party.

How disposed of.

SEC. 311. OBJECTIONS, HOW DISPOSED OF.—The objections taken to the appointment of any person as referee must be heard and dis-

posed of by the court. Affidavits may be read and witnesses examined as to such objections.

Report of referees.

SEC. 312. REFEREES TO REPORT WITHIN TWENTY DAYS.—The referees or commissioner must report their findings in writing to the court within twenty days after the testimony is closed and the facts found and conclusions of law must be separately stated therein.

Effect of referee's finding.

SEC. 313. EFFECT OF REFEREE'S FINDING.—The finding of the referee or commissioner upon the whole issue must stand as the finding of the court, and upon filing of the finding with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court.

How excepted to, etc.

SEC. 314. HOW EXCEPTED TO, AND SO FORTH.—The findings of the referee or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported has the effect of a special verdict.

Provisions relating to trials in general.

PROVISIONS RELATING TO TRIALS IN GENERAL

EXCEPTIONS

"Exception" defined; when taken.

SEC. 315. "EXCEPTION" DEFINED; WHEN TAKEN.—An exception is an objection upon a matter of law to a decision made, either before or after judgment, by a court, tribunal, judge, or other judicial officer, in an action or proceeding. The exception must be taken at the time the decision is made, except as provided in section 316.

Verdict or order in absence of party, deemed excepted to.

SEC. 316. VERDICT OR ORDER IN ABSENCE OF PARTY, DEEMED EXCEPTED TO.—The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision, finally determining the rights of the parties, or some of them, an order or decision from which an appeal may be taken, an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance, an order made upon ex parte application, giving an instruction, although no objection to such instruction was made, refusing to give an instruction, modifying an instruction requested, an order or decision made in the absence of the party or an order granting or denying a nonsuit or a motion to strike out evidence or testimony and a ruling sustaining or overruling an objection to evidence, are deemed to have been excepted to.

Form of exception.

SEC. 317. EXCEPTION, FORM OF.—No particular form of exception is required, but when the exception is to the verdict or decision, upon the ground of the insufficiency of the evidence to justify it, the objection must specify the particulars in which such evidence is alleged to be insufficient. The objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the reporter's notes of the evidence shall be stated. Documents on file in the action or proceeding may be copied, or the substance thereof stated, or a reference thereto sufficient to identify them may be made.

Bill of exceptions, when to be presented, etc.

SEC. 318. BILL OF EXCEPTIONS, WHEN TO BE PRESENTED, ETC.—A bill containing the exception to any decision may be presented to the court or judge, for settlement at any time after the decision is made, but the same must be presented within ten days after written notice of making such decision, and after having been settled must be signed by the judge and filed with the clerk. When the decision excepted to is made by a tribunal other than a court, or by a judicial officer, the bill of exceptions must be presented to and settled and signed by such tribunal or officer.

Preparation and settlement; time of filing.

SEC. 319. BILL OF EXCEPTIONS, PREPARATION AND SETTLEMENT; TIME OF FILING.—When a party desires to have exceptions taken at a

trial settled in a bill of exceptions, he may, at any time thereafter, and within ten days after the entry of judgment, if the action was tried with a jury, or after receiving notice of the entry of judgment, if the action was tried without a jury, or if proceedings on motion for a new trial be pending, within ten days after notice of decision denying said motion, or other determination thereof, or such further time as the court in which the action is pending, or the judge thereof, may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party.

Contents of draft.

CONTENTS OF DRAFT.—Such draft must contain all the exceptions and proceedings taken upon which the party relies, and may contain all matters reviewable on the same appeal whether occurring at the trial or on motion for a new trial. It may also contain a statement of any matters occurring upon the trial, in the presence of the court, showing any of the matters mentioned in subdivisions one and two of section 324.

Post, p. 963.

Adverse party may propose amendments.

ADVERSE PARTY MAY PROPOSE AMENDMENTS.—Within ten days after such service, the adverse party may propose amendments thereto, and serve the same or a copy thereof, upon the other party.

Delivery to judge.

DELIVERY TO THE JUDGE.—The proposed bill and amendments must, within ten days thereafter be presented by the party seeking the settlement of the bill, to the judge who tried or heard the case, upon five days' notice to the adverse party, or be delivered to the clerk of the court for the judge. When received by the clerk he must immediately deliver them to the judge, if he is in the Canal Zone; if he is absent from the Zone, and either party desires the paper to be forwarded to the judge, the clerk must, upon notice in writing of such party, immediately forward them by mail, or other safe channel; if not thus forwarded the clerk must deliver them to the judge immediately after his return to the Zone.

Judge to designate time of settling.

JUDGE TO DESIGNATE TIME OF SETTLING.—When received from the clerk, the judge must designate the time at which he will settle the bill, and the clerk must immediately notify the parties of such designation. At the time designated the judge must settle the bill. The bill must thereupon be engrossed and presented to the judge to be certified, by the party presenting it, within ten days.

Action tried before referee.

ACTION TRIED BEFORE REFEREE.—If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, upon notice of five days to the adverse party, and thereupon the referee must settle the bill. If no amendments are served or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the judge or referee, for settlement without notice to the adverse party.

Judge to strike out useless matter.

JUDGE TO STRIKE OUT USELESS MATTER.—It is the duty of the judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions and proceedings may be presented as briefly as possible. When settled, the bill must be signed by the judge or referee, with his certificate to the effect that the same is allowed, and must then be filed with the clerk.

Service when default entered.

NOT TO BE SERVED ON PARTY WHEN DEFAULT ENTERED.—No bill of exceptions, notice of appeal, or notice or paper, other than amendments to the pleadings or an amended pleading, need be served upon any party whose default has been duly entered, or who has not appeared in the action or proceeding.

Exceptions after judgment.

SEC. 320. EXCEPTIONS AFTER JUDGMENT.—Exceptions to any decision made after judgment may be presented to the judge at the time of such decision, and be settled or noted, as provided in section 318, or a bill thereof may be presented and settled afterward, as pro-

vided in section 319, and within like periods after written notice of entry of the order, upon appeal from which such decision is reviewable.

Proceedings if bill of exceptions refused.

SEC. 321. PROCEEDINGS IF JUDGE REFUSE TO ALLOW BILL OF EXCEPTIONS.—If the judge in any case refuses to allow a bill of exceptions in accordance with the facts, the party desiring the bill settled may apply by petition to the United States Circuit Court of Appeals for the Fifth Circuit to prove the same; the application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by the court as correct, and filed with the clerk of the court in which the action was tried, and when so filed it has the same force and effect as if settled by the judge who tried the cause.

Settlement of bill of exceptions.

SEC. 322. SETTLEMENT OF BILL OF EXCEPTIONS.—When the decision excepted to was made by any judicial officer, other than a judge, the bill of exceptions shall be presented to such judicial officer, and be settled and signed by him in the same manner as it is required to be presented to, settled, and signed by a court or judge. A judge or judicial officer may settle and sign a bill of exceptions after, as well as before, he ceases to be such judge or judicial officer. If such judge or judicial officer, before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Canal Zone, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the circuit court of appeals may, by its order or rules, direct.

New trials.

NEW TRIALS

Defined.

SEC. 323. NEW TRIAL DEFINED.—A new trial is a reexamination of an issue of fact in the same court after a trial and decision by a jury, court, or referee.

When granted.

SEC. 324. WHEN NEW TRIAL MAY BE GRANTED.—The former verdict or other decision may be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes, materially affecting the susbtantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

2. Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance, such misconduct may be proved by the affidavit of any one of the jurors;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;

5. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

7. Error in law, occurring at the trial and excepted to by the party making the application.

When a new trial is granted upon the ground of the insufficiency of the evidence to sustain the verdict, the order shall so specify; otherwise, on appeal from such order, it will be presumed that the order was not based upon that ground.

Application for.

SEC. 325. MANNER OF MAKING APPLICATION FOR NEW TRIAL.—When the application is made for a cause mentioned in the first, second, third, and fourth subdivisions of section 324, it must be made upon affidavits; otherwise it must be made on the minutes of the court.

Notice of motion, upon whom served; contents.

SEC. 326. NOTICE OF MOTION, UPON WHOM TO BE SERVED, AND WHAT TO CONTAIN.—The party intending to move for a new trial must, either before the entry of judgment or within ten days after receiving notice of the entry of the judgment, or within ten days after verdict, if the trial was by jury, file with the clerk and serve upon the adverse party a notice of his intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court or both. The time above specified shall not be extended by order or stipulation. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending, or the judge thereof, may allow (but not to exceed twenty days' additional time) file such affidavits with the clerk and serve a copy thereof upon the adverse party, who shall have ten days thereafter, or such further time as the court may allow (not exceeding twenty days' additional time) to file counter-affidavits and serve a copy thereof upon the moving party.

Time of hearing motion; reference to pleadings, orders and evidence at hearing.

SEC. 327. TIME OF HEARING MOTION; REFERENCE TO PLEADINGS, ORDERS AND EVIDENCE AT HEARING.—The motion for a new trial must be heard at the earliest practicable time after the filing of affidavits and counter-affidavits, in case the motion is made on affidavits, in other cases after the filing of the notice. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions and documentary evidence offered at the trial and to the report of the proceedings on the trial taken by the reporter, or to any certified transcript, of such report, or if there be no such report or certified transcript, to such proceedings occurring at the trial as are within the recollection of the judge; when the proceedings at the trial have been reported, but the reporter's notes have not been transcribed, the reporter must, upon request of the court, or either party, attend the hearing of the motion, and shall read his notes, or such parts thereof as the court, or either party, may require.

New trial has precedence.

NEW TRIAL HEARING HAS PRECEDENCE.—The hearing and disposition of the motion for a new trial shall have precedence over all other matters except criminal cases, probate matters, and cases actually on trial, and it shall be the duty of the court to determine the same at the earliest possible moment.

To be passed on within two months.

MOTION TO BE PASSED ON WITHIN TWO MONTHS.—The power of the court to pass on motion for a new trial shall expire within two months after the verdict of the jury or service on the moving party of notice of the entry of the judgment. If such motion is not determined within said two months, the effect shall be a denial of the motion without further order of the court.

Vacation of judgment.

SEC. 328. VACATION OF JUDGMENT.—A judgment or decree of the district court, when based upon findings of fact made by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of such party and entitling him to a different judgment:

1. Incorrect or erroneous conclusions of law not consistent with or not supported by the findings of fact; and in such case when

the judgment is set aside, the conclusions of law shall be amended and corrected.

2. A judgment or decree not consistent with or not supported by the special verdict.

Notice of intention to move to vacate judgment.

SEC. 329. NOTICE OF INTENTION TO MOVE TO VACATE JUDGMENT; TIME FOR MAKING MOTION.—The party intending to make the motion mentioned in section 328 must, within ten days after notice of the entry of judgment, serve upon the adverse party and file with the clerk of the court a notice of his intention, designating the grounds upon which, and the time at which the motion will be made, and specifying the particulars in which the conclusions of law are not consistent with the finding of facts, or in which the judgment or decree is not consistent with the special verdict. The time designated for the making of the motion must not be more than sixty days from the time of the service of the notice.

MANNER OF GIVING AND ENTERING JUDGMENT

Manner of giving and entering judgment.

Entry within twenty-four hours, etc.

SEC. 330. JUDGMENT TO BE ENTERED IN TWENTY-FOUR HOURS, AND SO FORTH.—When trial by jury has been had, judgment must be entered by the clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings. If the trial has been had by the court, judgment must be entered by the clerk, in conformity to the decision of the court, immediately upon the filing of such decision. In no case is a judgment effectual for any purpose until so entered.

Argument before court.

SEC. 331. CASE MAY BE BROUGHT BEFORE THE COURT FOR ARGUMENT.—When the case is reserved for argument or further consideration, as mentioned in section 330, it may be brought by either party before the court for argument.

When established counterclaim exceeds plaintiff's demand.

SEC. 332. WHEN COUNTERCLAIM ESTABLISHED EXCEEDS PLAINTIFF'S DEMAND.—If a counterclaim, established at the trial, exceed the plaintiff's demand, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

In replevin, judgment to be in the alternative, and with damages; gold coin or currency judgment.

SEC. 333. IN REPLEVIN, JUDGMENT TO BE IN THE ALTERNATIVE, AND WITH DAMAGES; GOLD COIN OR CURRENCY JUDGMENT.—In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery can not be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return can not be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein; and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood and agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another, judg-

ment for the plaintiff must be made payable in the kind of money or currency so received by such person.

Clerk to enter abstract of judgment.

SEC. 334. CLERK TO ENTER ABSTRACT OF JUDGMENT.—The clerk must enter an abstract of the judgment in a column set aside for that purpose on the civil docket.

If a party die after verdict, judgment may be entered.

SEC. 335. IF A PARTY DIE AFTER VERDICT, JUDGMENT MAY BE ENTERED.—If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment is payable in the course of administration on his estate.

What constitutes judgment roll.

SEC. 336. JUDGMENT ROLL, WHAT CONSTITUTES.—Immediately after entering the judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

1. In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.

2. In all other cases, the pleadings, all orders striking out any pleading in whole or in part, a copy of the verdict of the jury, or finding of the court or referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service, on such defendant; and if the service on such defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

Clerk to enter judgment.

SEC. 337. CLERK TO ENTER JUDGMENT.—Immediately after filing the judgment roll, the clerk must make the proper entries of the judgment under appropriate heads, in the civil docket kept by him.

Inspection of docket.

SEC. 338. DOCKET TO BE OPEN FOR INSPECTION WITHOUT CHARGE.—The docket kept by the clerk is open at all times, during office hours, for the inspection of the public, without charge. The clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Satisfaction of judgment, how made.

SEC. 339. SATISFACTION OF A JUDGMENT, HOW MADE.—Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner prescribed in chapter 22 of the Civil Code, by the judgment creditor, or by his indorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed. Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment, or make such indorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

Undertaking in actions to set aside transfer of property.

SEC. 340. UNDERTAKING IN ACTIONS TO SET ASIDE TRANSFER OF PROPERTY.—Where an action is commenced to set aside a transfer or conveyance of property on the grounds that such transfer or conveyance was made to hinder, delay, or defraud a creditor or creditors, the transferee or grantee to whom it is alleged the property was transferred or conveyed to hinder, delay, or defraud creditors or the successors or assigns of such transferee or grantee, may give an undertaking as herein provided, and when such undertaking is given as herein provided, the transferee or grantee to whom it is alleged the property was transferred or conveyed to hinder, delay, or defraud

creditors, or the successors and assigns of such transferee or grantee, may sell, encumber, transfer, convey, mortgage, pledge, or otherwise dispose of the property, or any part thereof, which is alleged to have been transferred or conveyed to hinder, delay, or defraud creditors, so that the purchaser, encumbrancer, transferee, mortgagee, grantee, or pledgee of such property, will take, own, hold, and possess such property unaffected by such action and suit, or the judgment which may be rendered therein.

Conditions of.

SEC. 341. CONDITIONS OF UNDERTAKING.—Such undertaking with two sureties shall be executed by the transferee or grantee to whom it is alleged the property was transferred or conveyed to hinder, delay, or defraud creditors, or the successor or assign of such transferee or grantee, in double the estimated value of the property so alleged to have been transferred or conveyed; provided, in no case need such undertaking be for a greater sum than double the amount of the debt or liability alleged to be due and owing to the plaintiff in such action, commenced to set aside said transfer and conveyance; and where such estimated value of the property alleged so to have been conveyed is less than the sum alleged to be due and owing to the plaintiff in the action, such estimated value shall be stated in the undertaking, and said undertaking shall be conditioned that, if it be adjudged in said action that the transfer or conveyance was made to hinder, delay, or defraud a creditor or creditors, then that the transferee or grantee or the said successor or assigns of such transferee or grantee giving such undertaking, will pay to the plaintiff in said action a sum equal to the value, as the same is estimated in said undertaking, of said property alleged to have been transferred or conveyed to hinder, delay, or defraud creditors, not exceeding the sum alleged to be due and owing to the plaintiff in the action.

Filing and serving.

SEC. 342. FILING AND SERVING UNDERTAKING.—Said undertaking shall be filed in the action in which said execution issued and a copy thereof served upon the plaintiff or his attorney in said action.

Objections to sureties.

SEC. 343. OBJECTIONS TO SURETIES.—Within ten days after service of the copy of undertaking the plaintiff may object to such undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in said undertaking, and upon the ground that the estimated value of the property therein is less than the market value of such property. Such objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property, such objection shall specify the plaintiff's estimate of the market value of the property. Such written objection shall be served upon the said transferee or grantee, or the successor or assigns of such transferee or grantee giving such undertaking.

Justification of sureties; approval and disapproval of undertaking.

SEC. 344. JUSTIFICATION OF SURETIES; APPROVAL AND DISAPPROVAL OF UNDERTAKING.—When the sureties or either of them, are objected to, the surety or sureties so objected to shall justify before the court in which the action is commenced, upon ten days' notice of the time when they will so justify being given to the plaintiff, or plaintiff's attorney. Upon the hearing and examination into the sufficiency of a surety, witnesses may be required to attend and evidence may be procured and introduced in the same manner as in trial of civil cases. Upon such hearing and examination the court shall make its order, in writing, approving or disapproving the sufficiency of the sureties or surety on such undertaking. In case the court disapproves of the surety or sureties on any undertaking, a new undertaking may be filed and served, and to any undertaking given

under the provisions of this act the same objection to the sureties may be made and the same proceedings had as in case of the first undertaking filed and served.

Objection because estimated value in undertaking less than market value; new undertaking.

SEC. 345. OBJECTION BECAUSE ESTIMATED VALUE IN UNDERTAKING LESS THAN MARKET VALUE; NEW UNDERTAKING.—When objection is made to the undertaking upon the ground that the estimated value of the property, as stated in the undertaking, is less than the market value of the property, the transferee or grantee, or the successor or assigns of such transferee or grantee giving the undertaking may accept the estimated value stated by the plaintiff in said objection, and a new undertaking may at once be filed, with the plaintiff's estimate stated therein as the estimated value, and no objection shall thereafter be made upon that ground; if the plaintiff's estimate of the market value is not accepted, the transferee or grantee, or the successor or assigns of the grantee or transferee giving such undertaking, upon ten days' notice to the plaintiff, shall move the court in which the action is pending to estimate the market value of the property, and upon the hearing of such motion, witnesses may be required to attend and testify, and evidence may be produced in the same manner as in the trial of civil actions. Upon the hearing of the motion the court shall estimate the market value of the property, and if the estimated value of the property as made by the court exceeds the estimated value as stated in the undertaking, a new undertaking shall be filed and served with the market value determined by the stated value therein as the estimated value of the property.

Justification of sureties.
Post, p. 1002.

SEC. 346. JUSTIFICATION OF SURETIES. The sureties shall justify upon the undertaking as required by section 533.

When undertaking effective.

SEC. 347. WHEN UNDERTAKING BECOMES EFFECTIVE.—The undertaking shall become effective for the purpose stated in section 340, ten days after service of copy thereof on the plaintiff, unless objection to such undertaking is made as provided in sections 343 or 345, and in case objection is so made to the undertaking filed and served, the same shall become effective for such purpose when an order is made by such court approving the sureties, when the surety or sureties are objected to, or affirming the estimate of the value of property when objection is made thereto, or in case any objection to the undertaking is sustained by the court when a new undertaking is filed and served as required by sections 344 or 345, to which no objection is made, or if made is not sustained by the court.

Judgment against sureties.

SEC. 348. JUDGMENT AGAINST SURETIES.—If judgment be rendered in said action that the alleged transfer or conveyance was made to hinder, delay, or defraud creditors, then judgment shall be rendered in such action without further proceeding in favor of plaintiff and against the principal and sureties on said undertaking for the sum for which said undertaking was executed according to the conditions thereof.

EXECUTION OF JUDGMENT IN CIVIL ACTIONS.

CHAPTER 12.—EXECUTION OF JUDGMENT IN CIVIL ACTIONS

EXECUTION

Time execution may issue.

SEC. 349. WITHIN WHAT TIME EXECUTION MAY ISSUE.—The party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement. If, after the entry of the judgment, the issuing of execution thereon is stayed or enjoined by any judgment or order of court, or by operation of law, the time during which it is so

stayed or enjoined must be excluded from the computation of the five years within which execution may issue.

Stay of.

SEC. 350. STAY OF EXECUTION.—The court or the judge thereof shall not have the power, without the consent of the adverse party, to stay, for a longer period than thirty days, the execution of any judgment or order the execution whereof would be stayed on appeal only by the execution of a stay bond.

Who may issue, form, to whom directed, requirements.

SEC. 351. WHO MAY ISSUE THE EXECUTION, ITS FORM, TO WHOM DIRECTED, AND WHAT IT SHALL REQUIRE.—The writ of execution must be issued in the name of the government of the Canal Zone, sealed with the seal of the court, and subscribed by the clerk, and be directed to the marshal, and it must intelligibly refer to the judgment, stating the court, the division where the judgment-roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money or currency, as provided in section 333, the execution must also state the kind of money or currency in which the judgment is payable, and must require the marshal substantially as follows:

Ante, p. 965.

1. If it be against the property of the judgment debtor, it must require the marshal to satisfy the judgment, with interest, out of the property of such debtor.

2. If it be against property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the marshal to satisfy the judgment, with interest, out of such property.

3. If it be against the person of the judgment debtor, it must require the marshal to arrest such debtor and commit him to jail until he pay the judgment, with interest, or be discharged according to law.

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in section 333, it must also require the marshal to satisfy the same in the kind of money or currency in which the judgment is made payable, and the marshal must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The marshal collecting money or currency in the manner required by this subchapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected.

5. If it be for the delivery of the possession of property, it must require the marshal to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the marshal to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the property of the person against whom it was rendered, and the value of the property for which the judgment was rendered to be specified therein if a delivery thereof can not be had.

When made returnable.

SEC. 352. WHEN MADE RETURNABLE.—The execution may be made returnable, at any time not less than ten nor more than sixty days after its receipt by the marshal, to the clerk with whom the judgment roll is filed. When the execution is returned the clerk must attach it to the judgment roll.

How money judgments and others enforced.

SEC. 353. MONEY JUDGMENTS AND OTHERS, HOW ENFORCED.—When the judgment is for money, or the possession of property, the same may be enforced by a writ of execution; and if the judgment direct

that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer to execute the judgment, by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

Execution after five years.

SEC. 354.—EXECUTION AFTER FIVE YEARS.—In all cases the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings; but nothing in this section shall be construed to revive a judgment for the recovery of money which shall have been barred by limitation at the time of the enactment of this code.

Execution on property of deceased party.

SEC. 355. WHEN EXECUTION MAY ISSUE AGAINST THE PROPERTY OF A PARTY AFTER HIS DEATH.—Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

1. In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

2. In case of the death of the judgment debtor, if the judgment be for the recovery of property, or the enforcement of a lien thereon.

Property liable to execution; not affected until levied on.

SEC. 356. PROPERTY LIABLE TO EXECUTION; NOT AFFECTED UNTIL LEVIED ON.—All goods, chattels, moneys, and other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment. Until a levy, property is not affected by the execution; but no levy shall bind any property for a longer period than one year from the date of the issuance of the execution; provided, however, an alias execution may be issued on said judgment and levied on any property not exempt from execution.

Indemnity where property claimed by third party.

SEC. 357. INDEMNITY WHERE PROPERTY CLAIMED BY THIRD PARTY.—If the property levied on is claimed by a third person as his property by a written claim verified by his oath or that of his agent, setting out his right to the possession thereof, and served upon the marshal, the marshal is not bound to keep the property unless the plaintiff, or the person in whose favor the writ of execution runs, on demand, indemnifies the marshal against such claim by an undertaking by at least two good and sufficient sureties in a sum equal to double the value of the property levied on; and the marshal is not liable for damages for the taking or keeping of such property to any such third person, unless such a claim is made.

The marshal may demand and exact the undertaking herein provided for notwithstanding any defect, informality, or insufficiency of the verified claim served upon him.

What exempt from execution.

SEC. 358. WHAT EXEMPT FROM EXECUTION.—The following property is exempt from execution or attachment, except as herein otherwise specially provided:

Exemptions.

1. Chairs, tables, desks, and books, to the value of $200 belonging to the judgment debtor;

2. Household furniture and utensils necessary for housekeeping and used for that purpose by the debtor, such as the debtor may select, of a value not exceeding $250; and all wearing apparel;

3. Tools and implements necessarily used by him in his trade or employment;

4. Two domestic animals such as the debtor may select, not exceeding $100 in value, and necessarily used by him in his ordinary occupation;

5. The professional libraries of lawyers, judges, clergymen, doctors, school teachers, and music teachers, not exceeding $250 in value;

6. One fishing boat and net, not exceeding the total value of $200, the property of any fisherman, by the lawful use of which he earns his livelihood;

7. The wages and earnings of all seamen and seagoing fishermen, not exceeding $300, regardless of where or when earned, and in addition to all other exemptions otherwise provided by any law;

8. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family, residing in the Canal Zone, supported in whole or in part by his labor; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, or have been incurred at a time when the debtor had no family residing in the Canal Zone, supported in whole or in part by his labor, the one-half of such earnings above mentioned is nevertheless subject to execution, garnishment, or attachment to satisfy debts so incurred;

9. All the nautical instruments and wearing apparel of any master, officer, or seaman of any steamer or other vessel;

10. All arms, uniforms, and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor;

11. Life insurance benefits. All moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed $500, and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that said $500 bears to the whole annual premiums paid;

12. Pensions. All money received by any person, a resident of the Canal Zone, as a pension from the United States Government, whether the same shall be in the actual possession of such pensioner or deposited, loaned, or invested by him.

Not exempt from judgment for price.

NOT EXEMPT FROM JUDGMENT FOR PRICE.—No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

How writ executed.

SEC. 359. WRIT, HOW EXECUTED.—The marshal must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the marshal, he must levy only on such part of the property as the

judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Notice of sale under execution, how given.

SEC. 360. NOTICE OF SALE UNDER EXECUTION, HOW GIVEN.—Before the sale of property on execution or under power contained in any deed of trust, notice thereof must be given as follows:

1. In case of perishable property: By posting written notice of the time and place of sale in three public places of the town where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

2. In case of other personal property: By posting a similar notice in three public places in the town where the sale is to take place, for not less than five days nor more than ten days.

3. In case of real property: By posting a similar notice particularly describing the property for twenty days, in three public places of the town where the property is to be sold and publishing a copy thereof once a week for the same period, in some newspaper of general circulation in the Canal Zone. Provided that where real property is to be sold under the provision of any deed of trust the copy of said notice shall be posted in some conspicuous place on the property to be sold, at least twenty days before date of sale.

4. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

Selling without notice, penalty.

SEC. 361. SELLING WITHOUT NOTICE WHAT PENALTY ATTACHED.—An officer selling without the notice prescribed by the last section forfeits $500 to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits $500.

Sales, how conducted.

SEC. 362. SALES, HOW CONDUCTED; NEITHER THE OFFICER CONDUCTING IT NOR HIS DEPUTY TO BE A PURCHASER; REAL AND PERSONAL PROPERTY, HOW SOLD; JUDGMENT DEBTOR, IF PRESENT, MAY DIRECT ORDER OF SALE, AND THE OFFICER SHALL FOLLOW HIS DIRECTIONS.—All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser or be interested in any purchase at such sale. When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the marshal must follow such directions.

Proceedings if purchaser refuses to pay purchase money.

SEC. 363. IF PURCHASER REFUSES TO PAY PURCHASE-MONEY, WHAT PROCEEDINGS.—If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

Refusal of purchaser's subsequent bid.

SEC. 364. OFFICER MAY REFUSE SUCH PURCHASER'S SUBSEQUENT BID.—When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Liability of officer.

SEC. 365. THESE TWO SECTIONS NOT TO MAKE OFFICER LIABLE BEYOND A CERTAIN AMOUNT.—Sections 363 and 364 must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

Delivery of personal property.

SEC. 366. PERSONAL PROPERTY CAPABLE OF MANUAL DELIVERY, HOW DELIVERED TO PURCHASER.—When the purchaser of any personal property capable of manual delivery pays the purchase-money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day of [1] the execution or attachment was levied.

When not capable of manual delivery.

SEC. 367. PERSONAL PROPERTY NOT CAPABLE OF MANUAL DELIVERY, HOW SOLD AND DELIVERED.—When the purchaser of any personal property not capable of manual delivery pays the purchase-money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Sale of real property, status of purchaser.

SEC. 368. SALE OF REAL PROPERTY; WHAT PURCHASER IS SUBSTITUTED TO AND ACQUIRES.—Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon. And in case property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day the attachment was levied upon such property.

When sales absolute; what certificate must show.

SEC. 369. WHEN SALES ARE ABSOLUTE; WHAT CERTIFICATE MUST SHOW.—Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this subchapter. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the registrar of property, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. If the property is subject to redemption, the certificate must so declare, and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated.

Redemption of real property so sold.

SEC. 370. REAL PROPERTY SO SOLD, BY WHOM IT MAY BE REDEEMED.—Property sold subject to redemption, as provided in section 369, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this subchapter, termed redemptioners.

When may be redeemed; redemption money.

SEC. 371. WHEN IT MAY BE REDEEMED, AND REDEMPTION MONEY.—The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within twelve months after the sale on

[1] So in original.

paying the purchaser the amount of his purchase, with 1 per cent per month thereon in addition, up to the time of redemption. And if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which said purchase was made, the amount of such lien with interest.

Another redemptioner may redeem.

SEC. 372. ANOTHER REDEMPTIONER MAY REDEEM.—If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with 2 per cent thereon in addition, and, in addition, the amount of any liens held by said redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

Selling property again.

SELLING PROPERTY AGAIN.—The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with 2 per cent thereon in addition, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own with interest.

Written notice to marshal; to be filed with registrar.

WRITTEN NOTICE TO MARSHAL; TO BE FILED WITH REGISTRAR.—Written notice of redemption must be given to the marshal and a duplicate filed with the registrar of property, and if the redemptioner has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the marshal and filed with the registrar; and if such notice be not filed, the property may be redeemed without paying such lien.

Marshal's deed.

MARSHAL'S DEED.—If no redemption be made within twelve months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a marshal's deed; but, in all cases, the judgment debtor shall have the entire period of twelve months from the date of the sale to redeem the property.

Redemption by judgment debtor.

REDEMPTION BY JUDGMENT DEBTOR.—If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated and he is restored to his estate.

Certificate of redemption.

CERTIFICATE OF REDEMPTION.—Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments. Such certificate must be filed and recorded in the office of the registrar of property, and the registrar must note the record thereof in the margin of the record of the certificate of sale.

Payments, in case of redemption.
Post, p. 1029.

SEC. 373. IN CASES OF REDEMPTION, TO WHOM THE PAYMENTS ARE TO BE MADE.—The payments mentioned in sections 702 and 703 [1] may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

Redemptioner's duties to redeem.

SEC. 374. WHAT A REDEMPTIONER MUST DO IN ORDER TO REDEEM.—A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the marshal making the sale, or his successor in office:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, where the

[1] So in original.

judgment is docketed; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the registrar;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

Restraint of property waste.

SEC. 375. UNTIL THE EXPIRATION OF REDEMPTION-TIME, COURT MAY RESTRAIN WASTE ON THE PROPERTY; WHAT CONSIDERED WASTE.—Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

Rents and profits.

SEC. 376. RENTS AND PROFITS.—The purchaser from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

Recovery, etc., by evicted purchaser of real property.

SEC. 377. IF PURCHASER OF REAL PROPERTY BE EVICTED FOR IRREGULARITIES IN SALE, WHAT HE MAY RECOVER, AND FROM WHOM; WHEN JUDGMENT TO BE REVIVED; PETITION FOR THE PURPOSE, HOW AND BY WHOM MADE.—If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at marshal's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the

Procedure.

judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

Contribution. Who may compel.

SEC. 378. PARTY WHO PAYS MORE THAN HIS SHARE MAY COMPEL CONTRIBUTION.—When property, liable to an execution against several persons, is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

Claimant may give undertaking and release property.

SEC. 379. CLAIMANT OF PROPERTY MAY GIVE UNDERTAKING AND RELEASE PROPERTY.—Where property levied upon under execution to satisfy a judgment for the payment of money is claimed, in whole or in part, by a person, corporation, partnership or association, other than the judgment debtor, such claimant may give an undertaking as hereinafter provided, which undertaking shall release the property in the undertaking described from the lien and levy of such execution.

Claim of property; undertaking, amount and condition of.

SEC. 380. CLAIM OF PROPERTY; UNDERTAKING, AMOUNT AND CONDITIONS OF.—Such undertaking, with two sureties, shall be executed by the person, corporation, partnership or association, claiming in whole or in part, the property upon which execution is levied in double the estimated value of the property claimed by the person, corporation, partnership or association; provided, in no case need such undertaking be for a greater sum than double the amount for which the execution is levied; and where the estimated value of the property so claimed by the person, corporation, partnership or association is less than the sum for which such attachment is levied, such estimated value shall be stated in the undertaking, and said undertaking shall be conditioned that if the property claimed by the person, corporation, partnership or association is finally adjudged to be the property of the judgment debtor, said person, corporation, partnership or association will pay of said judgment upon which execution has issued a sum equal to the value, as estimated in said undertaking, of said property claimed by said person, corporation, partnership or association, and said property claimed shall be described in said undertaking.

Filing and serving undertaking.

SEC. 381. CLAIM OF PROPERTY; UNDERTAKING, FILING, AND SERVING.—Said undertaking shall be filed in the action in which said execution issued, and a copy thereof served upon the judgment creditor or his attorney in said action.

Objections to.

SEC. 382. CLAIM OF PROPERTY; UNDERTAKING, OBJECTIONS TO.—Within ten days after the service of the copy of undertaking, the judgment creditor may object to such undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in said undertaking, and upon the ground that the estimated value of property therein is less than the market value of the property claimed. Such objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property claimed,

such objection shall specify the judgment creditor's estimate of the market value of the property claimed. Such written objection shall be served upon the person, partnership, corporation, or association giving such undertaking and claiming the property therein described.

Justification, approval, and disapproval.

SEC. 383. CLAIM OF PROPERTY; JUSTIFICATION, APPROVAL, AND DISAPPROVAL.—When the sureties, or either of them, are objected to, the surety or sureties so objected to shall justify before the court out of which such execution issued, upon ten days' notice of the time when they will so justify being given to the judgment debtor or his attorney. Upon the hearing and examination into the sufficiency of a surety, witnesses may be required to attend and evidence may be procured and introduced in the same manner as in trial of civil cases. Upon such hearing and examination, the court shall make its order, in writing, approving or disapproving the sufficiency of the surety or sureties on such undertaking. In case the court disapproves of the surety or sureties on any undertaking, a new undertaking may be filed and served, and to any undertaking given under the provisions of sections 379 to 386, the same objection to the sureties may be made, and the same proceedings had as in case of the first undertaking filed and served.

Undertaking, estimate of value, and new undertakings.

SEC. 384. CLAIM OF PROPERTY; UNDERTAKING, ESTIMATE OF VALUE, AND NEW UNDERTAKINGS.—When objection is made to the undertaking upon the ground that the estimated value of the property claimed, as stated in the undertaking, is less than the market value of the property claimed, the person, corporation, partnership, or association may accept the estimated value stated by the judgment creditor in said objection, and a new undertaking may be at once filed with the judgment creditor's estimate stated therein as the estimated value, and no objection shall thereafter be made upon that ground; if the judgment creditor's estimate of the market value is not accepted, the person, corporation, partnership, or association giving the undertaking shall move the court in which the execution issued, upon ten days' notice to the judgment creditor, to estimate the market value of the property claimed and described in the undertaking, and upon the hearing of such motion witnesses may be required to attend and testify, and evidence be produced in the same manner as in the trial of civil actions. Upon the hearing of such motion, the court shall estimate the market value of the property described in the undertaking, and if the estimated value made by the court exceeds the estimated value as stated in the undertaking, a new understanding [1] shall be filed and served, with the market value determined by the court stated therein as the estimated value.

Undertaking, justification of sureties.

SEC. 385. CLAIM OF PROPERTY; UNDERTAKING, JUSTIFICATION OF SURETIES.—The sureties shall justify on the undertaking as required by section 533.

When becomes effective.

SEC. 386. CLAIM OF PROPERTY; UNDERTAKING, WHEN BECOMES EFFECTIVE.—The undertaking shall become effective for the purpose herein specified ten days after service of copy thereof on the judgment debtor, unless objection to such undertaking is made as herein provided, and in case objection is made to the undertaking filed and served, then the undertaking shall become effective for such purposes when an undertaking is given as herein provided.

Proceedings supplemental to execution.

PROCEEDINGS SUPPLEMENTAL TO EXECUTION

Debtor required to answer concerning his property, when.

SEC. 387. DEBTOR REQUIRED TO ANSWER CONCERNING HIS PROPERTY, WHEN.—When an execution against property of the judgment debtor,

[1] So in original.

or of any one of several debtors in the same judgment, issued to the marshal, is returned unsatisfied in whole or in part, the judgment creditor, at any time after such return is made, is entitled to an order from the judge of the court, requiring such judgment debtor to appear and answer concerning his property before such judge, or a referee appointed by him, at a time and place specified in the order.

Proceedings to compel debtor to appear; when may be arrested; bail.

SEC. 388. PROCEEDINGS TO COMPEL DEBTOR TO APPEAR; IN WHAT CASES HE MAY BE ARRESTED; WHAT BAIL MAY BE GIVEN.—After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear, at a specified time and place, before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the marshal to arrest the debtor and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the judge or referee, as may be directed during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to jail.

Any debtor of the judgment debtor may pay the latter's creditor.

SEC. 389. ANY DEBTOR OF THE JUDGMENT DEBTOR MAY PAY THE LATTER'S CREDITOR.—After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the marshal the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the marshal's receipt is a sufficient discharge for the amount so paid.

Examination of debtors of judgment debtor, etc.

SEC. 390. EXAMINATION OF DEBTORS OF JUDGMENT DEBTOR, OR OF THOSE HAVING PROPERTY BELONGING TO HIM.—After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding $50, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

Witnesses required to testify.

SEC. 391. WITNESSES REQUIRED TO TESTIFY.—Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this subchapter, in the same manner as upon the trial of an issue.

Judge may order property to be applied on execution.

SEC. 392. JUDGE MAY ORDER PROPERTY TO BE APPLIED ON EXECUTION.—The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment debtor or denies the debt.

Proceedings upon claim of another party.

SEC. 393. PROCEEDINGS UPON CLAIM OF ANOTHER PARTY.—If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Punishment for disobedience of orders.

SEC. 394. DISOBEDIENCE OF ORDERS, HOW PUNISHED.—If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this subchapter, he may be punished by the court or judge ordering the reference, for a contempt.

ACTIONS IN PARTICULAR CASES.

CHAPTER 13.—ACTIONS IN PARTICULAR CASES

Foreclosure of mortgages.

ACTIONS FOR FORECLOSURE OF MORTGAGES

Proceedings.

SEC. 395. PROCEEDINGS IN FORECLOSURE SUITS.—There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real or personal property, which action must be in accordance with the provisions of this subchapter. In such action the court may, by its judgment, direct the sale of the encumbered property (or so much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, and the expenses of the sale, and the amount due plaintiff, including, where the mortgage provides for the payment of attorney's fees, such sum for such fees as the court shall find reasonable, not exceeding the amount named in the mortgage.

The court may, by its judgment, or at any time after judgment, appoint a commissioner to sell the encumbered property. It must require of him an undertaking in an amount fixed by the court, with sufficient sureties, to be approved by the judge, to the effect that the commissioner will faithfully perform the duties of his office according to law. Before entering upon the discharge of his duties he must file such undertaking, so approved, together with his oath that he will faithfully perform the duties of his office.

If it appear from the marshal's return, or from the commissioner's report, that the proceeds are insufficient, and a balance still remains due, judgment must then be docketed by the clerk in the manner provided in this code for such balance against the defendant or defendants personally liable for the debt. No person holding a conveyance from or under the mortgager of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the office of the registrar of property at the time of the commencement of the action, need be made a party to such action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been a party to the action.

If the court appoint a commissioner for the sale of the property, he must sell it in the manner provided by law for the sale of like property by the marshal upon execution; and the provisions of sections 349 to 386 are hereby made applicable to sale made by such commissioner, and the powers therein given and the duties therein imposed on the marshal are extended to such commissioner.

Ante, p. 968.

Surplus money to be deposited in court.

SEC. 396. SURPLUS MONEY TO BE DEPOSITED IN COURT.—If there be surplus money remaining, after payment of the amount due on the

mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

When debt secured falls due at different times.

SEC. 397. PROCEEDINGS WHEN DEBT SECURED FALLS DUE AT DIFFERENT TIMES.—If the debt for which the mortgage, lien, or encumbrance is held is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease, and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property can not be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Commissioner's oath, bond, report, and compensation.

SEC. 398. COMMISSIONER'S OATH, BOND, REPORT, AND COMPENSATION.—The commissioner, before entering upon his duties, must be sworn to perform them faithfully, and the court making the appointment shall require of him an undertaking, with sufficient sureties, to be approved by the court, in an amount to be fixed by the court, to the effect that he will faithfully perform the duties of commissioner, according to law. Within thirty days after such sale, the commissioner must file with the clerk of the court in which the action is pending, a verified report and account of the sale, together with the proper affidavits, showing that the regular and required notice of the time and place of the sale was given, which report and account shall have the same force and effect as the marshal's return in sales under execution. In all cases of sales made by a commissioner, the court in which the proceedings are pending shall fix a reasonable compensation for the commissioner's services, but in no case to be less than the sum of $10.

Actions for nuisance and waste.

ACTIONS FOR NUISANCE AND WASTE

Nuisance defined; abatement, by whom actions instituted.

SEC. 399. NUISANCE DEFINED; ABATEMENT OF; ACTIONS INSTITUTED, BY WHOM.—An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as the same is defined in section 1685 of the Civil Code, and by the judgment in such action the nuisance may be enjoined or abated as well as damages recovered therefor. A civil action may be brought in the name of the Government of the Canal Zone to abate a public nuisance, as the same is defined in section 1686 of the Civil Code, by the district attorney.

Actions for waste.

SEC. 400. WASTE, ACTIONS FOR.—If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Conflicting claims to property; real estate.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE

To quiet title.

SEC. 401. ACTION TO QUIET TITLE TO REAL AND PERSONAL PROPERTY.—An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim; provided, however, that whenever in an action to quiet title to, or to determine adverse claims to, real or personal property, the validity or interpretation of any gift, devise, bequest, or trust, under any will or instrument purporting to be a will, whether admitted to probate or not, shall be

Claim arising under will.

involved, such will, or instrument purporting to be a will, is admissible in evidence; and all questions concerning the validity of any gift, devise, bequest, or trust therein contained, save such as belong exclusively to the probate jurisdiction, shall be determined in such action: *Provided*, That if the said will shall have been admitted to probate and interpreted by a decree of the district court, which decree has become final, such interpretation shall be conclusive as to the proper construction of said will, or any part thereof, so construed, in any action under this section: *And provided, however*, That nothing herein contained shall be construed to deprive a party of the right to a jury trial in any case where by the law such right is now given.

Provisos.
Construction of will.

Jury trials.

When plaintiff can not recover costs.

SEC. 402. WHEN PLAINTIFF CAN NOT RECOVER COSTS.—If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff can not recover costs.

Where plaintiff's right terminates pending suit, what he may recover.

SEC. 403. WHERE PLAINTIFF'S RIGHT TERMINATES PENDING SUIT, WHAT HE MAY RECOVER.—In an action for the recovery of property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

When value of improvements can be allowed as set-off.

SEC. 404. WHEN VALUE OF IMPROVEMENTS CAN BE ALLOWED AS A SET-OFF.—When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages.

Surveying, etc., land in dispute.

SEC. 405. AN ORDER MAY BE MADE TO ALLOW A PARTY TO SURVEY AND MEASURE THE LAND IN DISPUTE.—The court in which an action is pending for the recovery of real property, or for damages for an injury thereto, or the judge thereof may, on motion, upon notice by either party for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

Order, what to contain, service; liability for unnecessary injury.

SEC. 406. ORDER, WHAT TO CONTAIN, AND HOW SERVED; IF UNNECESSARY INJURY DONE, THE PARTY SURVEYING TO BE LIABLE THEREFOR.—The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurements; but if any unnecessary injury be done to the property he is liable therefor.

Mortgage not a conveyance, whatever its terms.

SEC. 407. A MORTGAGE MUST NOT BE DEEMED A CONVEYANCE, WHATEVER ITS TERMS.—A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Injunction during foreclosure or after sale on execution, before conveyance.

SEC. 408. WHEN COURT MAY GRANT INJUNCTION DURING FORECLOSURE OR AFTER SALE ON EXECUTION, BEFORE CONVEYANCE.—The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or, after a sale on execution, before a conveyance.

Recovery of damages.

SEC. 409. DAMAGES MAY BE RECOVERED FOR INJURY TO THE POSSESSION AFTER SALE AND BEFORE DELIVERY OF POSSESSION.—When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

Action not to be prejudiced by alienation pending suit.

SEC. 410. ACTION NOT TO BE PREJUDICED BY ALIENATION PENDING SUIT.—An action for the recovery of real property against a person in possession can not be prejudiced by any alienation made by such person, either before or after the commencement of the action.

PROCEEDINGS IN MAGISTRATES' COURTS.

CHAPTER 14.—PROCEEDINGS IN MAGISTRATES' COURTS

Place of trial.

PLACE OF TRIAL OF ACTIONS IN MAGISTRATES' COURTS

Where actions must be commenced.

SEC. 411. ACTIONS, WHERE MUST BE COMMENCED.—Actions in magistrates' courts must be commenced, and, subject to the right to change the place of trial, as in this subchapter provided, must be tried:

1. In the subdivision in which the defendant resides;

2. When two or more persons are jointly, or jointly and severally, bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different subdivisions—in either subdivision;

3. In cases of injury to the person or property—in the subdivision where the injury was committed, or where the defendant resides;

4. If for the recovery of personal property, or the value thereof, or damages for taking or detailing the same—in the subdivision in which the property may be found, or in which the property was taken, or in which the defendant resides;

5. When the defendant is a nonresident of the Canal Zone—in either subdivision;

6. When a person has contracted to perform an obligation at a particular place, and resides in the other subdivision—in the subdivision in which such obligation is to be performed, or in which he resides; and the subdivision in which the obligation is incurred is deemed to be the subdivision in which it is to be performed, unless there is a special contract in writing to the contrary;

7. When the parties voluntarily appear and plead without summons—in either subdivision;

8. In all other cases—in the subdivision in which the defendant resides.

Change of venue.

SEC. 412. PLACE OF TRIAL MAY BE CHANGED IN CERTAIN CASES.—The court may, at any time before the trial, on motion, change the place of trial in the following cases:

1. When it appears to the satisfaction of the magistrate before whom the action is pending, by affidavit of either party, that such magistrate is a material witness for either party;

2. When either party makes and files an affidavit that he believes that he can not have a fair and impartial trial before such magistrate, by reason of the interest, prejudice, or bias of the magistrate;

3. When, from any cause, the magistrate is disqualified from acting.

Proceedings thereafter.

SEC. 413. PROCEEDINGS AFTER ORDER CHANGING PLACE OF TRIAL.—After an order has been made, transferring the action for trial to another court, the following proceedings must be had:

1. The magistrate ordering the transfer must immediately transmit to the magistrate of the court to which it is transferred, on payment

by the party applying of all the costs that have accrued, all the papers in the action, together with a certified transcript from his docket of the proceedings therein;

2. Upon the receipt by him of such papers, the magistrate to whom the case is transferred has thereafter the same jurisdiction over the action as though it had been commenced in his court.

MANNER OF COMMENCING ACTIONS IN MAGISTRATES' COURTS

Actions in magistrates' courts.

Complaint.

SEC. 414. ACTIONS, HOW COMMENCED.—An action in a magistrate's court is commenced by filing a complaint.

Summons.

SEC. 415. SUMMONS MAY ISSUE WITHIN A YEAR.—The court must indorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued.

Waiver of, by defendant.

SEC. 416. DEFENDANT MAY WAIVE SUMMONS.—At any time after the complaint is filed the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Appearance.

SEC. 417. PARTIES MAY APPEAR IN PERSON OR BY ATTORNEY.—Parties in magistrates' courts may appear and act in person or by attorney.

Appointment of guardian.

SEC. 418. WHEN GUARDIAN NECESSARY, HOW APPOINTED.—When an infant, insane, or incompetent person is a party, he must appear either by his general guardian, if he have one, or by a guardian ad litem appointed by the magistrate. When a guardian ad litem is appointed by the magistrate, he must be appointed as follows:

1. If the infant, insane, or incompetent person, be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, or if insane, or incompetent, upon the application of a relative or friend.

2. If the infant, insane, or incompetent person, be defendant, the appointment must be made at the time the summons is returned, or before the answer, upon the application of the infant, if he be of the age of fourteen years and apply at or before the summons is returned; if he be under the age of fourteen, or be insane or incompetent, or neglect so to apply, then upon the application of a relative or friend, or any other party to the action, or by the magistrate on his own motion.

Summons.

SEC. 419. SUMMONS, HOW ISSUED, DIRECTED, AND WHAT TO CONTAIN.—The summons must be directed to the defendant, signed by the magistrate, and must contain:

1. The title of the court, name of the subdivision in which the action is brought, and the names of the parties thereto;

2. A direction that the defendant appear and answer before the magistrate, as specified in section 420;

3. A notice that unless the defendant so appear and answer, the plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or will apply to the court for the relief demanded in the complaint. If the plaintiff appears by attorney, the name of the attorney must be indorsed upon the summons.

Time for appearance of defendant.

SEC. 420. TIME FOR APPEARANCE OF DEFENDANT.—The time specified in the summons for the appearance of the defendant must be as follows:

1. If an order of arrest is indorsed upon the summons, forthwith;

2. In all other cases, within five days, if the summons is served in the subdivision, in which the action is brought; within ten days, if served in the other subdivision.

Alias summons.

SEC. 421. ALIAS SUMMONS.—If the summons is returned without being served upon any or all of the defendants, or if it has been lost, the magistrate, upon the demand of the plaintiff, may issue an alias summons, in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date.

SEC. 422. SAME.—The magistrate may, within a year from the date of the filing of the complaint, issue as many alias summonses as may be demanded by the plaintiff.

Service of, outside of subdivision.

SEC. 423. SERVICE OF SUMMONS OUTSIDE OF SUBDIVISION.—The summons can not be served out of the subdivision wherein the action is brought, except in the following cases:

1. When the action is upon the joint contract or obligation of two or more persons, one of whom resides within the subdivision;

2. When the action is brought against a party who has contracted in writing to perform an obligation at a particular place, and resides in the other subdivision;

3. When the action is for injury to person or property, and the defendant resides in the other subdivision;

4. In all cases where the defendant was a resident of the subdivision when the action was brought, or when the obligation was incurred, and thereafter departed therefrom, in which event he may be served wherever he may be found;

5. In actions of forcible entry and detainer, or to enforce and foreclose liens on, or to recover possession of, personal property situated within the subdivision.

By whom and how served and returned.

SEC. 424. SUMMONS, BY WHOM AND HOW SERVED AND RETURNED.—The summons may be served by the constable of either of the Magistrates' Courts of the Canal Zone or by any other person of the age of eighteen years or over not a party to the action. When a summons issued by a magistrate is to be served out of the subdivision in which it is issued the summons must be served and returned as provided in chapter 8 of this code, or it may be served by publication and sections 121 and 122 so far as they relate to the publication of summons are made applicable to magistrates' courts, the word magistrate being substituted for the word judge wherever the latter word occurs.

Ante, p. 924.

Notice of hearing in magistrates' courts.

SEC. 425. NOTICE OF HEARING IN MAGISTRATES' COURTS.—When all the parties served with process shall have appeared, or some of them have appeared, and the remaining defendants have made default, the magistrate must fix the day for the trial of said cause, and give notice thereof to the parties to the action who have appeared, but in case any of the parties are represented by an attorney, then to such attorney: *Provided, however*, That where a party has appeared in person, such party shall leave with the magistrate or magistrate's clerk, and the same shall be entered upon the register in the action, an address where service of the notice of hearing of such matter may be made: *Provided, further*, That such notice shall be personally served on said person if he can be found at said address, but in case said person can not, after due diligence, be found at said address and such fact appears by affidavit to the satisfaction of the magistrate, then the service of such notice may be by registered mail and in the manner hereinafter provided for service of notice by mail. Such notice shall be in writing, signed by the magistrate, and substantially in the following form, filling blanks according to the facts:

Provisos.
Address of party appearing in person.

Service of notice.

Form of notice.

FORM OF NOTICE.—In the magistrate's court, subdivision of ———, Canal Zone.

"——— plaintiff, *v.* ——— defendant

"To ——— plaintiff, or ——— attorney for plaintiff, and to defendant, or ——— attorney for defendant:

"You and each of you will please take notice that the undersigned magistrate before whom the above-entitled cause is pending, has set for hearing the demurrer of ———, filed in said cause (or has set the said cause for trial, as the case may be), before me at ———, at —— o'clock — m., on the —— day of ———, 19—.

"Dated this —— day of ———, 19—.

"(Signed) ——— ———,

"Magistrate."

Service by mail.

SERVICE; SERVICE BY MAIL.—Said notice shall be served by mail or personally. When served by mail the magistrate shall deposit copies thereof in a sealed envelope in the post office at least ten days before the trial or hearing addressed to each of the persons on whom it is to be served at their place of residence: *Provided*, That such notice shall be served by mail only when the person on whom service is to be made resides out of the subdivision in which said magistrate's court is situated, or is absent therefrom or has appeared in person. When personally served said notice shall be served at least five days before the trial or hearing on the persons on whom it is to be served by any person competent and qualified to serve a summons in a magistrate's court, and when personally served it shall be served, returned and filed in like manner as a summons. When a party has appeared by attorney the notice may be served in the manner prescribed by subdivision 1 of section 515.

Proviso. When to be resorted to.

Post, p. 999.

Docket entries.

DOCKET ENTRIES.—The magistrate shall enter on his docket the date of trial or hearing; and when such notice shall have been served by mail the magistrate shall enter on his docket the date of mailing such notice of trial or hearing and such entry shall be prima facie evidence of the fact of such service. The parties are entitled to one hour in which to appear after the time fixed in said notice, but are not bound to remain longer than that time unless both parties have appeared and the magistrate being present is engaged in the trial of another cause.

Pleadings in magistrates' courts.

PLEADINGS IN MAGISTRATES' COURTS

Form.

SEC. 426. FORM OF PLEADINGS.—Pleadings in magistrates' courts—

1. Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended;
2. May, except the complaint, be oral or in writing;
3. Need not be verified, unless otherwise provided in this chapter;
4. If in writing, must be filed with the magistrate;
5. If oral, an entry of their substance must be made in the docket.

SEC. 427. PLEADINGS IN MAGISTRATES' COURTS.—The pleadings are:

1. The complaint by the plaintiff;
2. The demurrer to the complaint;
3. The answer by the defendant;
4. The demurrer to the answer.

"Complaint" defined.

SEC. 428. COMPLAINT DEFINED.—The complaint in magistrates' courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.

Demurrer.

SEC. 429. WHEN DEMURRER TO COMPLAINT MAY BE PUT IN.—The defendant may, at any time before answering, demur to the complaint.

Answer.

SEC. 430. ANSWER, WHAT TO CONTAIN.—The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or counterclaim, upon which an action might be brought by the defendant against the plaintiff, or his assignor, in a magistrate's court.

Counterclaim.

SEC. 431. IF THE DEFENDANT OMIT TO SET UP COUNTERCLAIM.—If the defendant omit to set up a counterclaim in the cases mentioned in section 430, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

Demurrer to answer.

SEC. 432. WHEN PLAINTIFF MAY DEMUR TO ANSWER.—When the answer contains new matter in avoidance, or constituting a defense or a counterclaim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

When affirmative judgment may be rendered.

SEC. 433. WHEN AFFIRMATIVE JUDGMENT MAY BE RENDERED FOR DEFENDANT.—Affirmative judgment may be rendered for the defendant on his cross-complaint (counterclaim) whenever the defendant proves that he is entitled to more than the plaintiff has proven or whenever the plaintiff fails to prove that he is entitled to any judgment.

Proceedings on demurrer.

SEC. 434. THE PROCEEDINGS ON DEMURRER.—The proceedings on demurrer are as follows:

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint;

2. If the demurrer to a complaint is overruled, the defendant may answer forthwith;

3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time, not exceeding two days, as the court may allow;

4. If the demurrer to an answer is overruled, the action must proceed as if no demurrer had been interposed.

Amendment of pleadings.

SEC. 435. AMENDMENT OF PLEADINGS.—Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will by the amendment be rendered necessary, require as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party.

Relief against judgment.

RELIEF AGAINST JUDGMENT.—The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for such relief must be made within ten days after notice of the entry of the judgment and upon an affidavit showing good cause therefor.

Answer or demurrer to amended pleadings.

SEC. 436. ANSWER OR DEMURRER TO AMENDED PLEADINGS.—When a pleading is amended, the adverse party may answer or demur to it within such time, as the court may allow, not exceeding five days after notice of the amendment.

PROVISIONAL REMEDIES IN MAGISTRATES' COURTS

ARREST AND BAIL

Provisional remedies in magistrates' courts. Arrest and bail.

Order of arrest; arrest of defendant.

SEC. 437. ORDER OF ARREST, AND ARREST OF DEFENDANT.—An order to arrest the defendant may be indorsed on a summons issued by the magistrate, and the defendant may be arrested thereon by the constable, at the time of serving the summons, and brought before the magistrate, and there detained until duly discharged, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express, or implied, when the defendant is about to depart from the Canal Zone, with intent to defraud his creditors;

2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use by one who received it in a fiduciary capacity;

3. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought;

4. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

Affidavit and undertaking for order of arrest.

SEC. 438. AFFIDAVIT AND UNDERTAKING FOR ORDER OF ARREST.—Before an order for an arrest can be made, the party applying must prove to the satisfaction of the magistrate by the affidavit of himself, or some other person, the facts upon which the application is founded. The plaintiff must also execute and deliver to the magistrate a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

Appearance of defendant.

SEC. 439. A DEFENDANT ARRESTED MUST BE TAKEN BEFORE THE MAGISTRATE IMMEDIATELY.—The defendant, immediately upon being arrested, must be taken before the magistrate who made the order, and if he is absent or unable to try the action, or if it appears to him by the affidavit of the defendant that he is a material witness in the action, the officer must immediately take the defendant before the magistrate of the other subdivision, who must take jurisdiction of the action and proceed thereon, as if the summons had been issued and the order of arrest made by him.

Notice to plaintiff of arrest.

SEC. 440. THE OFFICER MUST GIVE NOTICE TO THE PLAINTIFF OF ARREST.—The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

Detention of defendant.

SEC. 441. THE OFFICER MUST DETAIN THE DEFENDANT.—The officer making the arrest must keep the defendant in custody until he is discharged by order of the magistrate.

Attachment.

ATTACHMENT

Issue of writ.

SEC. 442. ISSUE OF WRIT OF ATTACHMENT.—A writ to attach the property of the defendant must be issued by the magistrate at the time of or after issuing summons in actions in which the sum claimed exclusive of interest exceeds $10, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in section 221.

Undertaking on; exceptions to sureties.

SEC. 443. ATTACHMENT, UNDERTAKING ON; EXCEPTIONS TO SURETIES.—Before issuing the writ, the magistrate must require a written under-

taking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than $50 nor more than $300, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. At any time after the issuing of the attachment, but not later than five days after the notice of its levy, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to they must justify in the manner and within the time provided in section 222, otherwise the magistrate must order the writ of attachment vacated.

Ante, p. 944.

To whom writ directed; requirements.

SEC. 444. TO WHOM WRIT DIRECTED; WHAT TO REQUIRE.—The writ must be directed to the constable and must require him to attach and safely keep all of the property of the defendant within his subdivision not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against the defendant, the amount of which must be stated in conformity with the complaint, unless the defendant, whose property has been or is about to be attached, give him security by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand against such defendant besides costs; in which case to take such undertaking.

In the event that the action is against more than one defendant, any defendant whose property has been or is about to be attached in such action may give the constable such undertaking, and the constable shall take the same, and such undertaking shall not subject such defendant to or be answerable for any demand against any other defendant, nor shall the constable thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant: *Provided, however*, That such defendant, at the time of giving such undertaking to the constable, shall file with the constable a statement duly verified under oath, wherein such defendant shall aver and declare that the other defendant or defendants in the action in which said undertaking was given has or have not any interest or claim of any nature whatsoever in or to said property. Such statement must further contain the character of such defendant's title and the manner in which he acquired title to such attached property.

Proviso.
Sworn statement to be filed.

Service out of subdivision.

SERVICE OUT OF SUBDIVISION.—A writ may be issued at the same time to the constable of the other subdivision.

Provisions applicable to all attachments in magistrates' courts.
Ante, pp. 926, 944.

SEC. 445. CERTAIN PROVISIONS APPLY TO ALL ATTACHMENTS IN MAGISTRATES' COURTS.—Section 121 and sections 224 to 243, both inclusive, of this code are applicable to attachments issued in magistrates' courts, the word "constable" being substituted for the word "marshal," and the word "magistrate" being substituted for the word "judge."

Claim and delivery of personal property.

CLAIM AND DELIVERY OF PERSONAL PROPERTY

How enforced.

SEC. 446. HOW CLAIM AND DELIVERY ENFORCED.—In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him; and the sections of this code from section 202 to section 213, both inclusive, are applicable to such claim when made in magistrates' courts, the powers therein given and duties imposed on the marshal being extended to constables, and the word "magistrate" substituted for "judge."

Ante, p. 939.

JUDGMENT BY DEFAULT IN MAGISTRATES' COURTS

Judgment by default.

SEC. 447. JUDGMENT WHEN DEFENDANT FAILS TO APPEAR.—If the defendant fails to appear and to answer or demur within the time specified in the summons, then, upon proof of service of summons, the following proceedings must be had:

Failure of defendant to appear.

1. If the action is based upon a contract, and is for the recovery of money, or damages only, the court must render judgment in favor of plaintiff for the sum specified in the summons.

2. In all other actions the court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such sum (not exceeding the amount stated in the summons), as appears by such evidence to be just.

SEC. 448. JUDGMENT BY DEFAULT.—In the following cases the same proceedings must be had and judgment must be rendered in like manner as if the defendant had failed to appear and answer, or demur:

Other cases, when must be rendered.

1. If the complaint has been amended, and the defendant fails to answer it, as amended, within the time allowed by the court;

2. If the demurrer to the complaint is overruled, and the defendant fails to answer within the time allowed by the court, not to exceed five days;

3. If the demurrer to the answer is sustained and the defendant fails to amend the answer within the time allowed by the court.

TIME OF TRIAL AND POSTPONEMENTS IN MAGISTRATES' COURTS

Time of trial and postponements.

Commencement.

SEC. 449. TIME WHEN TRIAL MUST BE COMMENCED.—Unless postponed, as provided in this subchapter, or unless transferred to the other subdivision, the trial of the action must commence at the expiration of one hour from the time specified in the notice mentioned in section 425, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

Postponement.

SEC. 450. WHEN COURT MAY, OF ITS OWN MOTION, POSTPONE TRIAL.—The court may, of its own motion, postpone the trial—

1. For not exceeding one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action;

2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary.

By consent.

SEC. 451. POSTPONEMENT BY CONSENT.—The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

Upon application of a party.

SEC. 452. POSTPONEMENT UPON APPLICATION OF A PARTY.—The trial may be postponed upon the application of either party, for a period not exceeding four months:

1. The party making the application must prove, by his own oath or otherwise, that he can not, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it and has been unable to do so;

2. If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody, but the action may proceed notwithstanding, and the defendant is subject to arrest on execution, in the same manner as if he had not been discharged;

3. If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by, the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the magistrate must order the defendant to be discharged from custody.

4. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the magistrate, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness was produced;

But the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

Limitation on continuance.

SEC. 453. NO CONTINUANCE FOR MORE THAN TEN DAYS TO BE GRANTED, UNLESS UPON FILING OF UNDERTAKING.—No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking, in an amount fixed by the magistrate, with two sureties, to be approved by the magistrate, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

Trials in magistrates' courts.

TRIALS IN MAGISTRATES' COURTS

"Issue" defined.

SEC. 454. ISSUE DEFINED, AND THE DIFFERENT KINDS.—Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

Kinds.

1. Of law; and,

2. Of fact.

How raised. Issue of law.

SEC. 455. ISSUE OF LAW, HOW RAISED.—An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Of fact.

SEC. 456. ISSUE OF FACT, HOW RAISED.—An issue of fact arises—

1. Upon a material allegation in the complaint controverted by the answer; and,

2. Upon new matter in the answer, except an issue of law is joined thereon.

How tried.

SEC. 457. ISSUES, HOW TRIED.—Issues, both of law and of fact, must be tried by the court.

Failure of party to appear.

SEC. 458. EITHER PARTY FAILING TO APPEAR, TRIAL MAY PROCEED AT REQUEST OF OTHER PARTY.—If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

Exhibition of original instrument.

SEC. 459. REQUIRING EXHIBITION OF ORIGINAL INSTRUMENT.—When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order; or, if

such order is not obeyed, the account or instrument can not be given in evidence.

Complaint, when accompanying instrument deemed genuine.

SEC. 460. COMPLAINT, WHEN ACCOMPANYING INSTRUMENT DEEMED GENUINE.—If the complaint of the plaintiff, or the answer of the defendant, contains a copy, or consists of the original of the written obligation upon which the action is brought or the defense founded, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same is verified, or unless the plaintiff, within two days after the service on him of such answer, files with the magistrate an affidavit denying the same, and serves a copy thereof on the defendant.

JUDGMENTS (OTHER THAN BY DEFAULT) IN MAGISTRATES' COURTS

Judgments (other than by default).

By confession.

SEC. 461. JUDGMENT BY CONFESSION.—Judgments upon confession may be entered up in either magistrate's court specified in the confession.

Dismissal without prejudice.

SEC. 462. JUDGMENT OF DISMISSAL ENTERED IN CERTAIN CASES WITHOUT PREJUDICE.—Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted; or fails to prosecute the action to judgment with reasonable diligence; provided a counterclaim has not been made, or affirmative relief sought by the cross-complaint or answer of the defendant; if a provisional remedy has been allowed, the undertaking must thereupon be delivered by the magistrate to the defendant who may have his action thereon;

2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter;

3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court;

4. When the action is brought in the wrong subdivision.

Entry of.

SEC. 463. ENTRY OF JUDGMENT OF DISMISSAL.—Judgment of dismissal must be entered whenever the plaintiff fails to bring the action to trial within two years after the case is brought to an issue of law or fact, except where the parties have stipulated in writing that the time may be extended.

Entry within thirty days.

SEC. 464. ENTRY OF JUDGMENT IN THIRTY DAYS.—Judgment must be entered within thirty days after the submission of the case to the court.

Form of magistrate's judgment.

SEC. 465. FORM OF MAGISTRATE'S JUDGMENT; NOTICE.—The judgment of a magistrate must be entered substantially in the form required in section 333, and where the defendant is subject to arrest and imprisonment thereon the fact must be stated in the judgment. No judgment shall have effect for any purpose until so entered.

Notice.

Notice of the rendition of judgment must be given to the parties to the action in writing signed by the magistrate. Where any of the parties are represented by an attorney, notice shall be given to the attorney. Said notice shall be served by mail or personally, and shall be substantially in the form of the abstract of judgment required in section 469. When served by mail the magistrate shall deposit copies thereof in a sealed envelope in the post office not later than five days after the rendition of the judgment, addressed to each of the persons on whom notice is to be served at their places of residence, or place of business if on an attorney. When served personally said notice shall be served within five days after the

rendition of the judgment. Entry of the date of mailing shall be made by the magistrate in his docket.

Excess remitted if sum found due exceeds magistrate's jurisdiction.

SEC. 466. IF THE SUM FOUND DUE EXCEEDS THE JURISDICTION OF THE MAGISTRATE, THE EXCESS MAY BE REMITTED.—When the amount found due to either party exceeds the sum for which the magistrate is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Offer to compromise before trial.

SEC. 467. OFFER TO COMPROMISE BEFORE TRIAL.—If the defendant, at any time before the trial, offers, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he does not accept such offer before the trial, and fails to recover in the action a sum in excess of the offer, he can not recover costs incurred after the offer, but costs must be adjudged against him, and, if he recovers, be deducted from his recovery. The offer and failure to accept it can not be given in evidence nor affect the recovery, otherwise than as to costs.

Costs included in judgment.

SEC. 468. COSTS MAY BE INCLUDED IN THE JUDGMENT.—The magistrate must tax and include in the judgment the costs allowed by law to the prevailing party.

Abstract of judgment.

SEC. 469. ABSTRACT OF JUDGMENT.—The magistrate, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

Form.

"Canal Zone, magistrate's court, subdivision of ————, ————, plaintiff, v. ————, defendant. Judgment entered for plaintiff (or defendant) for $————, on the ———— day of ————."

"I certify that the foregoing is a correct abstract of a judgment rendered in said action in this court."

"———— ————, Magistrate."

"Date of abstract ————."

Correction of clerical mistakes.

SEC. 470. CORRECTION OF CLERICAL MISTAKES IN JUDGMENT.—The magistrate shall have power upon motion of the injured party and notice to the adverse party to correct any clerical mistakes in his judgment as entered, so as to conform to the judgment ordered. Said magistrate shall have power to set aside any void judgment upon motion of either party to the action after notice to the adverse party, and thereupon said action shall be treated as if no judgment had been entered.

Executions from magistrates' courts.

EXECUTIONS FROM MAGISTRATES' COURTS

May issue at any time within five years.

SEC. 471. EXECUTION MAY ISSUE AT ANY TIME WITHIN FIVE YEARS.—Execution for the enforcement of a judgment of a magistrate's court may be issued by the magistrate who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Stay of execution.

SEC. 472. STAY OF EXECUTION OF JUDGMENT.—The court, or the magistrate thereof, may stay the execution of any judgment, including any judgment in a case of forcible entry or unlawful detainer, for a period not exceeding ten days.

Contents of.

SEC. 473. CONTENTS OF EXECUTION.—The execution must be directed to the constable, and must be subscribed by the magistrate and bear date the day of its delivery to the officer. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the magistrate before whom, and of the subdivision where, and the time when it was rendered; the amount of judgment, if it be for money; and, if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the

constable, as are required by the provisions of chapter 12, of this code, in an execution to the marshal. *Ante*, p. 969.

Renewal of.

SEC. 474. RENEWAL OF EXECUTION.—An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the magistrate. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Duty of officer receiving.

SEC. 475. DUTY OF OFFICER RECEIVING EXECUTION.—The constable to whom the execution is directed must execute the same in the same manner as the marshal is required by the provisions of chapter 12 of this code, to proceed upon executions directed to him; and the constable, when the execution is directed to him, is vested for that purpose with all the powers of the marshal. *Ante*, p. 968.

Proceedings supplementary to. *Ante*, p. 977.

SEC. 476. PROCEEDINGS SUPPLEMENTARY TO EXECUTION.—The sections of this code, from 387 to 394, both inclusive, are applicable to magistrates' courts, the word "constable" being substituted, to that end, for the word "marshal," and the word "magistrate" for "judge." If the judgment debtor does not reside in the subdivision wherein the judgment was entered, an abstract of the judgment, in the form prescribed by section 469, may be filed in the office of the magistrate of the subdivision wherein the defendant resides, and such magistrate may issue execution on such judgment, and may take and exercise such jurisdiction in proceedings supplemental to execution, as if such judgment were originally entered in his court.

Contempts in magistrates' courts.

CONTEMPTS IN MAGISTRATES' COURTS

Sections governing. *Post*, p. 1018.

SEC. 477. WHAT SECTIONS GOVERN CONTEMPTS.—Contempts in magistrates' courts are governed by sections 634 to 647.

Dockets of magistrates.

DOCKETS OF MAGISTRATES

Contents.

SEC. 478. DOCKET, WHAT TO CONTAIN.—Each magistrate must keep a book, denominated a "docket," in which he must enter:

1. The title of every action or proceeding.

2. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof.

3. The date of the summons, and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact.

4. The time when the parties, or either of them, appear, or their nonappearance, if default be made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading.

5. Every adjournment, stating on whose application and to what time.

6. The judgment of the court, specifying the costs included and the time when rendered.

7. The issuing of the execution, when issued and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the magistrate, when and by whom.

8. The receipt of a notice of appeal, if any be given, and of the appeal bond.

Entries, prima facie evidence of fact.

SEC. 479. ENTRIES THEREIN PRIMA FACIE EVIDENCE OF THE FACT.—The several particulars of the last section specified must be entered under the title of the action to which they relate, and (unless otherwise in this chapter provided) at the time when they occur. Such

entries in a magistrate's docket, or a transcript thereof, certified by the magistrate, or his successor in office, are prima facie evidence of the facts so stated.

Index must be kept.

SEC. 480. AN INDEX TO THE DOCKET MUST BE KEPT.—A magistrate must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

Delivery to successor.

SEC. 481. DOCKETS MUST BE DELIVERED BY MAGISTRATE TO HIS SUCCESSOR.—Every magistrate, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

General provisions relating to magistrates' courts.

GENERAL PROVISIONS RELATING TO MAGISTRATES' COURTS

Subpœnas; final process.

SEC. 482. MAGISTRATES MAY ISSUE SUBPŒNAS AND FINAL PROCESS TO ANY PART OF THE SUBDIVISION.—Magistrates may issue subpœnas in any action or proceeding in the courts held by them, and final process on any judgment recovered therein, to any part of the subdivision.

Filling in blanks.

SEC. 483. BLANKS MUST BE FILLED IN ALL PAPERS ISSUED BY A MAGISTRATE, EXCEPT SUBPŒNAS.—The summons, execution, and every other paper made or issued by a magistrate, except a subpœna, must be issued without a blank left to be filled by another, otherwise it is void.

Receipt and payment of moneys.

SEC. 484. MAGISTRATES TO RECEIVE ALL MONEYS COLLECTED AND PAY THE SAME TO PARTIES.—Magistrates must receive from the constables, all moneys collected on any process or order issued from their courts respectively, and must pay the same, and all moneys paid to them in their official capacity, over to the parties entitled or authorized to receive them, without delay.

Disability of magistrate; substitutions.

SEC. 485. IN CASE OF DISABILITY OF MAGISTRATE, OTHER MAGISTRATE MAY ATTEND ON HIS BEHALF.—In case of the sickness or other disability or necessary absence of a magistrate, the other magistrate may, at his request, attend in his behalf, and thereupon is vested with the power and may perform all the duties and issue all the papers or process of the absent magistrate. In case of a trial the proper entry of the proceedings before the attending magistrate, subscribed by him, must be made in the docket of the magistrate before whom the summons was returnable. If the case is adjourned, the magistrate before whom the summons was returnable may resume jurisdiction.

Security for costs.

SEC. 486. MAGISTRATES MAY REQUIRE SECURITY FOR COSTS.—Magistrates may in all cases require a deposit of money or an undertaking, as security for costs of court, before issuing a summons.

Deposit in lieu of undertaking.

SEC. 487. DEPOSIT IN LIEU OF UNDERTAKING.—In all civil cases arising in magistrates' courts, wherein an undertaking is required as prescribed in this code, the plaintiff or defendant may deposit with said magistrate a sum of money in United States currency equal to the amount required by the said undertaking, which said sum of money shall be taken as security in place of said undertaking.

Code provisions applicable to magistrates' courts.

SEC. 488. WHAT PROVISIONS OF CODE APPLICABLE TO MAGISTRATES' COURTS.—Magistrates' courts being courts of limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in magistrates' courts, or which have been made applicable by special provisions in this chapter, are applicable to magistrates' courts and the proceedings therein.

CHAPTER 15.—APPEALS IN CIVIL ACTIONS

APPEALS IN CIVIL ACTIONS.

REVIEW BY JUDGE OF ORDERS MADE OUT OF COURT

Review of orders made out of court.

SEC. 489. ORDERS MADE OUT OF COURT, WITHOUT NOTICE, MAY BE REVIEWED BY THE JUDGE.—An order made out of court, without notice to the adverse party, may be vacated or modified, without notice, by the judge who made it; or may be vacated or modified on notice, in the manner in which other motions are made.

APPEALS TO UNITED STATES CIRCUIT COURT OF APPEALS

Appeals to U. S. Circuit Court of Appeals.

How governed.

SEC. 490. APPEALS TO CIRCUIT COURT OF APPEALS, HOW GOVERNED.—Appeals from the district court to the United States Circuit Court of Appeals for the Fifth Circuit are governed by section 9 of the Panama Canal Act, as amended, and by § 1 of Act Apr. 11, 1928, C. 354, 45 Stat. 422.

Vol. 45, p. 422.

CROSS REFERENCE

Time for making application for appeal, see United States Code, title 28, section 230.

U. S. C., p. 896.

APPEALS TO DISTRICT COURT

Appeals to district court.

SEC. 491. APPEALS TO DISTRICT COURT.—Any party dissatisfied with the judgment rendered in a civil action in a magistrate's court, may appeal therefrom to the district court, at any time within thirty days after notice of the rendition of the judgment. The appeal is taken by filing a notice of appeal with the magistrate, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact or both.

On question of law.

SEC. 492. APPEAL ON QUESTION OF LAW.—When a party appeals to the district court on a question of law alone, he must, within ten days after notice of the rendition of judgment, prepare a statement of the case and file the same with the magistrate. The statement must contain the grounds upon which the party intends to rely upon the appeal, and so much of the evidence, as may be necessary to explain the grounds, and no more. Within ten days after receiving notice that the statement is filed, the adverse party, if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the magistrate, and if no amendment be filed the original statements stand as adopted. The statement thus adopted or as settled by the magistrate, with a copy of the docket of the magistrate, and all motions filed with him by the parties, during the trial and the notice of appeal, may be used on the hearing of the appeal before the district court.

On questions of fact, or law and fact.

SEC. 493. APPEAL ON QUESTIONS OF FACT, OR LAW AND FACT.—When a party appeals to the district court on questions of fact, or on questions of both law and fact, no statement need be made, but the action must be tried anew in the district court.

Transmission of papers to district court.

SEC. 494. TRANSMISSION OF PAPERS TO DISTRICT COURT.—Upon receiving the notice of appeal, and on payment of the fees of the magistrate, payable on appeal and not included in the judgment, and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the magistrate must, within five days, transmit to the clerk of the district court, if the appeal be on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, and the undertaking filed; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and all other papers filed in the cause, the notice

of appeal, and the undertaking filed; and the magistrate may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the magistrate by the party or his attorney. In the district court, either party may have the benefit of all legal objections made in the magistrate's court.

Undertaking on appeal.

SEC. 495. UNDERTAKING ON APPEAL.—An appeal from a magistrate's court is not effectual for any purpose, unless an undertaking be filed with two or more sureties in the sum of $25 for the payment of the costs on the appeal, or, if a stay of proceedings be claimed, in the sum of $25 plus a sum equal to the amount of the judgment, including costs, when the judgment is for the payment of money; or plus twice the value of the property including costs, when the judgment is for the recovery of specific personal property; and must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

When the action is for the recovery of or to enforce or foreclose a lien on specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the district court, and will obey any order made by the court therein.

When the judgment appealed from directs the delivery of possession of real property, the execution of the same can not be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed any waste thereon, and that if the appeal be dismissed or withdrawn, or the judgment affirmed, or judgment be recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; or that he will pay any judgment and costs that may be recovered against him in said action in the district court, not exceeding a sum to be fixed by the magistrate of the court from which the appeal is taken, and which sum must be specified in the undertaking.

A deposit of the sum of $50 plus the amount of the judgment, including all cost appealed from, or plus the value of the property, including all costs, in actions for the recovery of specific personal property, with the magistrate, is equivalent to the filing of the undertaking, and in such cases the magistrate must transmit the money to the clerk of the district court to be by him paid out on the order of the court.

Filing of undertaking; exception to and justification of sureties.

SEC. 496. FILING OF UNDERTAKING; EXCEPTION TO AND JUSTIFICATION OF SURETIES.—The undertaking on appeal must be filed within five days after the filing of the notice of appeal, and notice of the filing of the undertaking must be given to the respondent. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the magistrate within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

Stay of proceedings.

SEC. 497. STAY OF PROCEEDINGS ON FILING UNDERTAKING.—If an execution be issued on the filing of the undertaking staying proceedings, the magistrate must, by order, direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

Powers of district court on appeal.

SEC. 498. POWERS OF DISTRICT COURT ON APPEAL.—Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify any or all of the proceedings subsequent to and dependent upon such judgment, and may, if necessary or proper, order a new trial. When the action is tried anew, on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to changing the place of trial, and all the provisions as to trials in the district court, are applicable to trials on appeal in the district court. For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed, with costs; and if it appear to such court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25 per cent of the judgment appealed from. Judgments rendered in the district court on appeal shall have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the district court.

No appeal effective unless fees for filing paid.

SEC. 499. NO APPEAL EFFECTIVE UNLESS FEES FOR FILING ARE PAID.—No appeal taken from a judgment rendered in a magistrate's court in civil matters shall be effectual for any purpose whatever unless the appellant shall, at the time of filing the notice of appeal, pay to the magistrate, in addition to the fee payable to the magistrate on appeal, a docket fee of $5 for filing the appeal and for placing the action on the calendar in the district court. Upon transmitting the papers on appeal, the magistrate shall transmit to the clerk of the district court the sum thus deposited for filing the appeal in the district court and for placing the action on the calendar. No notice of appeal shall be filed unless the fees herein provided for are paid in accordance with the provisions of this section.

Time limitation on appeal from magistrate's court.

SEC. 500. DISMISSAL OF APPEALS FROM MAGISTRATE'S COURT WHERE NOT BROUGHT TO TRIAL WITHIN ONE YEAR.—No action heretofore or hereafter appealed from the magistrate's court to the district court, shall be further prosecuted, and no further proceedings shall be had therein, and all such actions heretofore, or hereafter appealed, must be dismissed by the court to which the same shall have been appealed, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, where the appealing party fails to bring such appeal to trial within one year from the date of filing such appeal in said district court, unless such time be otherwise extended by a written stipulation by the parties to the action filed with the clerk of the district court to which the appeal is taken.

Papers returned on dismissal.

SEC. 501. PAPERS RETURNED ON DISMISSAL OF APPEAL.—Upon dismissal of the appeal the clerk of the district court shall return all the papers to the court from which the appeal was taken, and the magistrate of said court shall have jurisdiction the same as if no appeal had been taken.

MISCELLANEOUS PROVISIONS.

CHAPTER 16.—MISCELLANEOUS PROVISIONS

PROCEEDINGS AGAINST JOINT DEBTORS

Proceedings against joint debtors.

Summons after judgment.

SEC. 502. PARTIES NOT SUMMONED IN ACTION ON JOINT CONTRACT MAY BE SUMMONED AFTER JUDGMENT.—When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 120, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

Ante, p. 925.

Contents.

SEC. 503. SUMMONS IN THAT CASE, WHAT TO CONTAIN, AND HOW SERVED.—The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable within the same time, as the original summons. It is not necessary to file a new complaint.

Affidavit to accompany.

SEC. 504. AFFIDAVIT TO ACCOMPANY SUMMONS.—The summons must be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon.

Answer; contents.

SEC. 505. ANSWER; WHAT IT MAY CONTAIN.—Upon such summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, by reason of any defense existing at the commencement of the action.

What constitute pleadings in the case.

SEC. 506. WHAT CONSTITUTE THE PLEADINGS IN THE CASE.—If the defendant, in his answer, denies the judgment, or sets up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he denies his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute such written allegations, subject to the right of the parties to amend their pleadings as in other cases.

Trial of issues; verdict.

SEC. 507. ISSUES, HOW TRIED; VERDICT, WHAT TO BE.—The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found or a decision rendered against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

OFFER OF DEFENDANT TO COMPROMISE

Offer of defendant to compromise.

Proceedings on, after suit brought.

SEC. 508. PROCEEDINGS ON OFFER OF THE DEFENDANT TO COMPROMISE AFTER SUIT BROUGHT.—The defendant may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with proof of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and can not be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he can not recover costs, but must pay the defendant's costs from the time of the offer.

INSPECTION OF WRITINGS

Inspection of writings.

SEC. 509. A PARTY MAY DEMAND INSPECTION AND COPY OF A BOOK, PAPER, AND SO FORTH.—Any court in which an action is pending, or the judge thereof may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of entries of accounts in any book, or of any document or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defense therein. If compliance with the order be refused, the court may exclude the entries of accounts of the book, or the document, or paper from being given in evidence, or if wanted as evidence by the party applying may presume them, or direct the jury to presume them, to be such as he alleges them to be; and the court may also punish the party refusing for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents, when he is examined as a witness.

May be demanded, etc.

MOTIONS AND ORDERS

Motions and orders.

SEC. 510. ORDER AND MOTION DEFINED.—Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Defined.

SEC. 511. MOTIONS AND ORDERS, WHERE MADE.—Motions must be made in the division, in which the action is pending. Orders made out of court may be made by the judge of the court in either division.

Where made.

SEC. 512. NOTICE OF MOTION, WHEN TO BE GIVEN.—When a written notice of a motion is necessary, it must be given five days before the time appointed for the hearing.

Notice.

SEC. 513. ORDER FOR PAYMENT OF MONEY, HOW ENFORCED.—Whenever an order for the payment of a sum of money is made by a court pursuant to the provisions of this code, it may be enforced by execution in the same manner as if it were a judgment.

Order for payment of money.

NOTICES AND FILING AND SERVICE OF PAPERS

Notices, filing and service of papers.

SEC. 514. NOTICES AND PAPERS, HOW SERVED.—Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based. If any such paper has not previously been served upon the party to be notified and was not filed by him, a copy of such paper must accompany the notice. Notices and other papers may be served upon the party or attorney in the manner prescribed in this subchapter, when not otherwise provided by this code.

Form and contents.

Service.

SEC. 515. NOTICES AND PAPERS, WHEN AND HOW SERVED.—The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

Manner of service.

1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office; or, if it is not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of not less than eighteen years of age, if his residence is in the same division with his office; and if his residence is not known, or is not in the same division with his office, or being in the same division it is not open, or there is not found thereat any person of not less than eighteen years of age, then

On attorney.

by putting the same, inclosed in a sealed envelope, into the post office directed to such attorney at his office, if known; otherwise to his residence, if known; and if neither his office nor his residence is known, then by delivering the same to the clerk of the court for the attorney;

On party.

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning and six in the evening, with some person of not less than eighteen years of age; if at the time of attempted service between the said hours no such person can be found at his residence, the same may be served by mail; and, if his residence is not known, then by delivering the same to the clerk of the court for such party.

Service by mail, when.

SEC. 516. SERVICE BY MAIL, WHEN.—Service by mail may be made where the person making the service and the person on whom it is to be made reside or have their offices in different places between which there is a regular communication by mail.

How.

SEC. 517. SERVICE BY MAIL, HOW.—In case of service by mail, the notice or other paper must be deposited in the post office, in a sealed envelope addressed to the person on whom it is to be served, at his office or place of residence. The service is complete at the time of the deposit.

Appearance of defendant.

SEC. 518. APPEARANCE; NOTICES AFTER APPEARANCE.—A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned for want of bail.

Notice of subsequent proceedings.

Service on nonresidents.

SEC. 519. SERVICE ON NONRESIDENTS.—When a plaintiff or a defendant, who has appeared, resides out of the Canal Zone, and has no attorney in the action or proceeding, the service may be made on the clerk for him. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except service of subpœnas, of writs, and other process issued in the suit, and of papers to bring him into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section. If his sole attorney has no known office in the Canal Zone, notices and papers may be served by leaving a copy thereof with the clerk of the court, unless such attorney shall have filed in the cause an address of a place at which notices and papers may be served on him, in which event they may be served at such place.

Preceding provisions not to apply in contempt proceedings.

SEC. 520. PRECEDING PROVISIONS NOT TO APPLY TO PROCEEDING TO BRING PARTY INTO CONTEMPT.—The foregoing provisions of this subchapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

General provisions.

GENERAL PROVISIONS

Lost papers, how supplied.

SEC. 521. LOST PAPERS, HOW SUPPLIED.—If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

Title of action not necessary on papers.

SEC. 522. PAPERS WITHOUT THE TITLE OF THE ACTION, OR WITH DEFECTIVE TITLE, MAY BE VALID.—An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refer to such action or proceeding.

Successive actions on same contract, etc.

SEC. 523. SUCCESSIVE ACTIONS ON THE SAME CONTRACT, ETC.—Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

Severance and consolidation of actions.

SEC. 524. SEVERANCE AND CONSOLIDATION.—An action may be severed and actions may be consolidated, in the discretion of the court, whenever it can be done without prejudice to a substantial right.

Action, when deemed pending.

SEC. 525. ACTIONS, WHEN DEEMED PENDING.—An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

Action by adverse claimant; surety.

SEC. 526. ACTIONS TO DETERMINE ADVERSE CLAIMS, AND BY SURETIES.—An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which plaintiff is bound as a surety.

Recording of testimony.

SEC. 527. TESTIMONY; WHO MAY TAKE DOWN.—On the trial of an action in the district court, if there is no shorthand reporter of the court in attendance, the testimony may be taken down in writing by anyone agreed to by the parties.

Clerk to keep minutes.

SEC. 528. THE CLERK SHALL KEEP MINUTE BOOKS.—The clerk shall in person or by assistant attend all sessions of the court and keep minute books, in which he shall record, under the direction of the judge, all the proceedings of the court.

Authority of two of three referees to act.

SEC. 529. TWO OF THREE REFEREES, AND SO FORTH, MAY DO ANY ACT.—When there are three referees, all must meet, but two of them may do any act which might be done by all.

Extension of time for filing pleadings, etc.

SEC. 530. EXTENSION OF TIME WITHIN WHICH AN ACT IS TO BE DONE; NOT TO EXCEED THIRTY DAYS; EXCEPTION.—When an act to be done, as provided in this code, relates to the pleadings in the action, or the undertakings to be filed, or the justifications of sureties, or the preparation of bills of exceptions, or of amendments thereto, or to the service of notices other than of appeal, the time allowed by this code, unless otherwise expressly provided, may be extended, upon good cause shown, by the judge of the district court; but such extension shall not exceed thirty days, without the consent of the adverse party.

Action against officer for official acts.

SEC. 531. ACTION AGAINST OFFICER FOR OFFICIAL ACTS.—If an action is brought against any officer or person for an act for the doing of which he had theretofore received any valid bond or covenant of indemnity, and he gives seasonable notice thereof in writing to the persons who executed such bond or covenant, and permits them to conduct the defense of such action, the judgment recovered therein is conclusive evidence against the persons so notified; and the court may, on motion of the defendant, upon notice of five days, and upon proof of such bond or covenant, and of such notice and permission, enter judgment against them for the amount so recovered and costs.

Corporations as sureties.

SEC. 532. CORPORATIONS MAY BECOME SURETIES ON UNDERTAKINGS AND BONDS.—In all cases where an undertaking or bond, with any number of sureties, is authorized or required by any provision of this code, or of any law of the Canal Zone, any corporation with a paid-up capital of not less than $100,000, incorporated under the laws of any State of the United States for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by law, or which, by the laws of the State

where it was incorporated has such power, and which shall have complied with all the requirements of the law of the Canal Zone regulating the admission of these corporations to transact such business in the Canal Zone, may become and shall be accepted as security or as sole and sufficient surety upon such undertaking or bond, and such corporate surety shall be subject to all the liabilities and entitled to all the rights of natural persons' sureties.

Requisites of undertakings.

SEC. 533. UNDERTAKINGS MENTIONED IN THIS CODE, REQUISITES OF.—In any case where an undertaking or bond is authorized or required by any law of the Canal Zone, the officer taking the same must, except in the case of such a corporation as is mentioned in the next preceding section, require the sureties to accompany it with an affidavit that they are each residents of the Canal Zone, and are each worth the sum specified in the undertaking or bond, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking or bond exceeds $3,000, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond, if the whole amount is equivalent to that of two sufficient sureties.

Any corporation such as is mentioned in the next preceding section may become sole surety on such bond.

New undertaking.

NEW UNDERTAKING.—Whenever an undertaking has been given and approved in any action or proceeding, and it is thereafter made to appear to the satisfaction of the court that any surety upon such undertaking has for any reason become insufficient, the court may, upon notice, order the giving of a new undertaking, with sufficient sureties, in lieu of such insufficient undertaking. In case such new undertaking so required shall not be given within the time required by such order, or in case the sureties thereon fail to justify thereon when required, all rights obtained by the filing of such original undertaking shall immediately cease.

Justification by corporate surety.

SEC. 534. JUSTIFICATION BY CORPORATE SECURITY ON BONDS.—Whenever the surety on a bond or undertaking authorized or required by any law of the Canal Zone is a foreign corporation, authorized to become surety on bonds or undertakings in the Canal Zone, and exception is taken to the sufficiency of such surety as required by law, such corporate surety may justify on such bond or undertaking as follows:

Procedure.

PROCEDURE.—Any agent, attorney in fact, or officer of such corporation shall submit to the court, judge, officer, board, or other person before whom the justification is to be made:

Production of power of attorney.

First. The original, or a certified copy of, the power of attorney, by-laws or other instrument showing the authority of the person or persons who executed the bond or undertaking to execute the same;

Certificate of authority.

Second. A certified copy of the certificate of authority, showing that the corporation is authorized to transact business;

Continuation of such authority.

Third. A certificate from the executive secretary showing that the said certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended, or in the event that it has been, that renewed authority to act under such certificate has been granted;

Financial statement.

Fourth. A financial statement showing the assets and liabilities of such corporation at the end of the quarter calendar year prior to forty-five days next preceding the date of the execution of the bond or undertaking; such financial statement must be verified under oath by the president, or a vice president and attested by the secretary or an assistant secretary of such corporation.

JUSTIFICATION WHEN COMPLETE.—Upon complying with the foregoing provisions and it appearing that the bond or undertaking was duly executed, that the corporation is authorized to transact business in the Canal Zone, and that its assets exceed its liabilities in an amount equal to or in excess of the amount of the bond or undertaking, the justification of the surety shall be complete and it shall be accepted as the sole and sufficient surety on the bond or undertaking. Justification, when complete.

SEC. 535. CLERK MAY ACCEPT CASH DEPOSIT IN LIEU OF BOND.—In all proceedings in which a bond is required the clerk of the district court may accept a cash deposit in the sum of the bond. Where a cash bond is given, such moneys or any part thereof may be withdrawn only upon order of the court. Cash deposit in lieu of bond.

SEC. 536. CLERK TO COPY CERTAIN BONDS IN APPROPRIATE BOOK.—All bonds of every nature and description required in civil actions or proceedings, except bonds for arrest or appeal from inferior courts, shall be copied in full by the clerk in an appropriate book, and such copy, duly authenticated by him, shall have the force and effect of the original. Bonds to be copied in appropriate book.

SEC. 536a. CLERK TO BE EX OFFICIO REGISTRAR OF PROPERTY.—The clerk of the district court is ex officio registrar of property of the Canal Zone, and the assistant clerks shall have and exercise like powers in the name of their principal. The clerk and his assistants shall have the duties of registrar so as to give constructive notice in all cases where provision is made for such notice by law. They shall keep proper books of record, which shall at all reasonable hours be open to the public. Clerk ex officio registrar of property.

SEC. 537. GOVERNMENT NOT REQUIRED TO GIVE BONDS WHEN A PARTY.—In any civil action or proceeding wherein the Government is a party plaintiff, or any government officer, in his official capacity or on behalf of the Government, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the Government, or any officer thereof; but on complying with the other provisions of this code the Government, or any government officer acting in his official capacity, have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this code. Government not required to give bond.

SEC. 538. SURETY ON APPEAL SUBSTITUTED TO RIGHTS OF JUDGMENT CREDITOR.—Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce, and satisfy such judgment, in all respects as if he had recovered the same. Subrogation of surety on appeal bond.

DECLARATORY RELIEF

SEC. 539. DECLARATORY RELIEF.—Any person interested under a deed, will or other written instrument, or under a contract, or who desires a declaration of his rights or duties with respect to another or in respect to, in, over or upon property, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an action in the district court for a declaration of his rights and duties in the premises, including a determination of any question of construction or validity arising under such instrument or contract. He may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of such rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and such declaration Declaratory relief.

shall have the force of a final judgment. Such declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

Powers not exercised, when.

SEC. 540. POWER NOT EXERCISED WHEN.—The court may refuse to exercise the power granted by this subchapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.

Other remedies not affected.

SEC. 541. OTHER REMEDIES NOT AFFECTED.—The remedies provided by this sub-chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party to such action, and no judgment under this sub-chapter shall preclude any party from obtaining additional relief based upon the same facts.

FEES, COSTS, ETC., DISTRICT AND MAGISTRATES' COURTS.

CHAPTER 17.—FEES; COSTS AND SECURITY FOR COSTS IN THE DISTRICT AND MAGISTRATES' COURTS

Fees in general.

FEES IN GENERAL

Specific fees only, to be demanded.

SEC. 542. LAWFUL TO DEMAND SPECIFIC FEES ONLY.—It shall be lawful for the clerk of the district court, referees, and commissioners appointed by the district court, the marshal, magistrates, constables, and other officers and persons hereinafter mentioned, together with their assistants and deputies, to demand, and receive, the hereinafter mentioned fees and no more; but all fees collected by officers drawing a regular salary or fixed compensation from the Government shall be paid over to the Collector of the Panama Canal.

Docket fees, etc., for services of clerk or magistrate.

SEC. 543. DOCKET FEES AND OTHER DEPOSITS FOR SERVICES OF CLERK OR MAGISTRATE.—The United States of America, the Government of the Canal Zone, and the Panama Canal, or any officer thereof who sues or is sued in his official capacity, shall not be required to pay any costs for the bringing or defending of an action. Every other plaintiff in a civil action commenced in the district court, except as hereinafter designated, shall deposit with the clerk or assistant clerk thereof a docket fee of $8 upon the filing of the complaint. An intervenor who is allowed to intervene therein shall deposit $5 upon the filing of the petition of intervention. A plaintiff in a habeas corpus, mandamus, certiorari, or prohibition proceeding, or any other special proceeding, except a probate or guardianship proceeding, shall deposit $3 upon the filing of the complaint. Such sum or sums so deposited shall be full compensation for the clerk or assistant clerk for all services performed in any such action or proceeding, except lawful copy fees for furnishing copies of any paper or record therein. Any other plaintiff in a civil action commenced in a magistrate's court at the time of commencing the action shall deposit a docket fee of $3. An intervenor who intervenes therein shall deposit a fee of $1 at the time of appearance. Such sum or sums so deposited shall be full compensation for all services of the magistrate in said action; except that lawful copy fees may be charged and collected for furnishing copies of any paper or record therein.

Jury fees.

SEC. 544. JURY FEE.—Any party to a civil case in the district court, who demands a trial by jury, shall accompany said demand with a deposit of $10 as a jury fee; and unless such deposit is made, the case shall be tried without the intervention of a jury.

Probate, etc., fees.

SEC. 545. FEES IN PROBATE AND GUARDIANSHIP MATTERS.—The fees for the services of the clerk or assistant clerk of the district court in probate and guardianship matters shall be as follows: Where the value of the estate does not exceed $1,000, $3; where the value of

the estate exceeds $1,000, and does not exceed $5,000, $5; where the value of the estate exceeds $5,000, $8.

Such fees shall be in full of the services of the clerk or assistant clerk in such proceedings, except that they shall be entitled to charge lawful fees for furnishing copies of papers and records therein. The judge of the district court shall have the power, in his discretion, in any case where the estate is small and the circumstances warrant, to waive the payment of any fee to the clerk or assistant clerk for services to be performed in such proceedings.

Clerk, district court, fees of.

SEC. 546. CLERK OF DISTRICT COURT; FEES FOR VARIOUS SERVICES; COPIES OF PAPERS AND RECORDS.—For certifying the official act of a magistrate or other certificate, with seal, 25 cents.

Certifications, etc.

For certified copies of any paper, record, decree, judgment, or entry, for each one hundred words or fraction thereof, 10 cents, and the further sum of 25 cents for each certification: *Provided, however*, That where copies are furnished by those desiring the same, the certification fee alone shall be collected.

Proviso. When copies furnished by applicant.

Copies of records, etc., for transmission to circuit court of appeals.

For all copies of records, or bills of exception, or testimony, or of other documents for transmission to the circuit court of appeals, 10 cents for each one hundred words or fraction thereof, and the further sum of 25 cents for each certification thereof: *Provided, however*, That where copies are furnished by those desiring the same, the certification fee alone shall be collected.

Proviso. When copies furnished by applicant.

Fees for service of process.

SEC. 547. MARSHAL, CONSTABLES, AND OTHER PERSONS SERVING PROCESS.—For executing process, preliminary and final judgments, and decrees of any court, for each mile of travel in the service of process going one way, reckoned from the place of service to the place to which the process is returnable, 10 cents; for serving an attachment against the property of the defendant, $1, together with a reasonable allowance to be made by the court for expenses, if any, necessarily incurred in caring for the property attached; for arresting each defendant, 50 cents; for serving summons and copy of complaint for each defendant, $1; but in special proceedings, testamentary or administrative, where several members of a family residing at the same place are defendants the fee for each defendant shall be 50 cents; for serving subpœnas, for each witness served, 25 cents besides travel fees; for each copy of any process necessarily deposited in the office of Registrar of Property, 10 cents for each one hundred words, but not less than 50 cents in each case; for taking bonds or other instruments of indemnity or security, for each, 25 cents; for executing a writ of process to put a person in possession of real estate, $1; for attending with prisoner on habeas corpus trial, each day, $1; for transporting each prisoner on habeas corpus or otherwise, when required, for every mile going and returning, 10 cents; for advertising sale, besides printer's charge, 50 cents; for taking inventory of goods levied upon, to be charged only when the inventory is necessary, a sum fixed by the court not exceeding the actual reasonable cost of the same to be shown by vouchers; for levying an execution on property, $1.

For collection of money.

On all money collected by him by order or any decree, execution, attachment, or any other process, the following sums, to wit:

On the first $100 or less, 2 per centum.

On the second $100, 1½ per centum; on all sums between $200 and $1,000, 1 per centum; on all sums in excess of $1,000, ½ per centum.

For attempted service.

SEC. 548. SAME; ATTEMPTS TO SERVE PROCESS.—The following fees shall be charged for return on and mileage in attempts to serve

process, or any order, judgment, or decree of any court in civil cases:

(a) For each return, $1.

(b) For mileage going one way in attempting to serve or execute any process, order, judgment, or decree of any court, for each mile traveled one way, 10 cents.

(c) No such fees shall be charged against the United States or The Panama Canal or an officer thereof sued in his official capacity.

Magistrates' fees.

SEC. 549. MAGISTRATES.—For all services of a magistrate in a civil case, the fees prescribed in section 543; for administering oath upon any affidavit or other paper with certificate of oath, 20 cents; for an appeal, with proceedings taking bond, making and forwarding transcript of record, 75 cents; for each certificate not otherwise provided for, 15 cents; for writing and certifying deposition, including the administration of oath to the witness, 10 cents for each one hundred words in the deposition and certificate; for certified copies of any record of proceeding of which any person is entitled to receive a copy, 10 cents for each one hundred words.

Account of fees to be rendered.

A magistrate upon receiving payment of fees allowed to him by law, must render to the person or persons so paying an itemized account thereof.

Witness fees, district court.

SEC. 550. WITNESS FEES.—Witnesses in the district court, either in actions or special proceedings, shall be entitled to $1 per day and 10 cents for each mile going to the place of trial from their homes by the nearest route of usual travel; but mileage shall be charged but once in the action unless witness is compelled to attend more than one term of court, nor shall any allowance be made for mileage except that traveled within the Canal Zone.

Magistrates', etc., courts.

Witnesses before magistrates' courts and other inferior tribunals shall be allowed 50 cents per day and the travel fees above provided and no more.

Allowance of, on affidavit of witness.

Fees to which witness may be entitled in a civil action shall be allowed, on the affidavit of the witness, stating the number of days he has attended, the amount of mileage to which he is entitled, to be taken and preserved by the clerk of the court, magistrate, or other officer before whom the witness was called to testify, and a certificate of the allowance shall be given to the witness. But on final taxation of costs the truth of the affidavit may be contested and this allowance may be set aside in whole or in part as the facts require. A witness shall not be allowed compensation for his attendance in more than one case or on more than one side of the same case at the same time, but may elect in which of several cases or on which side of the case, when he is summoned by both sides, to claim his attendance; a person who is compelled to attend court on other business shall not be paid as a witness.

Referee's fees.

SEC. 551. REFEREE'S FEES.—The fees of referees are $5 to each for every day spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rates shall be allowed.

Additional fees.

SEC. 552. OTHER FEES TO BE FIXED BY GENERAL RULES OF THE DISTRICT COURT.—If it shall appear that services are required of clerks of court, marshals or officers of the court, other than those for which specific fees have been provided in this subchapter, the district judge shall by general rules provide for a scale of fees for such other services, which scale shall be proportionate to the fees in this subchapter provided for similar services.

COSTS

Costs.

Responsibility for.

SEC. 553. EACH PARTY RESPONSIBLE FOR HIS COSTS; FEES FOR SERVICE OF PROCESS PAYABLE IN ADVANCE.—Each party to any civil suit instituted in the district court or any magistrate's court of the Canal Zone shall be responsible for the costs incurred by him in such suit, and the marshal, constable or other officer, authorized to execute any process in such cases, shall not execute the same unless the fees allowed by law for the service of such process, shall be paid in advance by the party seeking such process, unless such party to the suit is entitled to prosecute the same in forma pauperis, as provided in section 554.

Suits in forma pauperis.

SEC. 554. PROSECUTION OR DEFENSE OF SUITS IN FORMA PAUPERIS.—Any citizen of the United States, entitled to commence any suit or action in any court in the Canal Zone, may commence and prosecute or defend to conclusion any such suit or action, without being required to prepay fees or costs or give security therefor, before or after bringing such suit or action, upon filing in the said court a statement, under oath, in writing, that because of his poverty he is unable to pay the costs of said suit or action, or to give security for same, and that he believes that he is entitled to the redress he seeks by such suit or action, and setting forth the nature of the said cause of action.

Right to contest inability to pay costs.

The opposing party in the suit, the clerk of the district court, or his assistant, or the magistrate, as the case may be, may contest the inability of the party to pay costs or his inability to furnish security for same; and the contest shall be heard at such time as the court or magistrate may determine.

If no contest, court to issue, etc., process, etc.

If no contest is made upon the affidavit, or if the same is admitted by the court or magistrate after the contest, it shall be the duty of the officers of the court thereafter to issue and serve all processes and perform all duties on behalf of such party as in other cases.

Allowance of costs to prevailing party.

SEC. 555. COSTS ORDINARILY ALLOWED TO PREVAILING PARTY.—Costs shall ordinarily be allowed to the prevailing party as a matter of course, but the court shall have power for special reasons to adjudge that either party shall pay the costs of an action, or that the same be divided as may be equitable.

Bill of costs and taxing of.

SEC. 556. BILL OF COSTS AND TAXING OF COSTS IN DISTRICT COURT.—The party in whose favor judgment is rendered in the district court and who claims his costs, must within five days after the verdict or notice of the decision of the court deliver to the clerk and to the adverse party, or his attorney, a memorandum of the items of his costs in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs so claimed, may, within five days after notice of filing of the bill of costs, file a motion to have the same taxed by the court or the judge thereof in said action.

Costs recoverable in district court.

SEC. 557. WHAT COSTS MAY BE RECOVERED IN DISTRICT COURT.—In an action pending in the district court, the prevailing party may recover the following costs and no others:

For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial, the witness' lawful fees.

For each deposition lawfully taken by him, and produced in evidence, $2.50.

For original documents, deeds, or papers of any kind produced by him, nothing.

For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies.

The lawful fees paid by him for the service of any process in the action, and all lawful clerk's fees paid by him.

Magistrate to tax costs in his court.

SEC. 558. MAGISTRATE TO TAX COSTS IN HIS COURT.—The costs in the magistrate's court shall be taxed by the magistrate without the filing and service of a memorandum of costs as provided in section 556, and upon such information as to magistrate and constable costs and other costs and fees and mileage of witnesses as the magistrate may require.

Costs recoverable in magistrates' courts.

SEC. 559. WHAT COSTS MAY BE RECOVERED IN MAGISTRATES' COURTS.—In an action pending before a magistrate, the plaintiff may recover the following costs, and no others:

For each witness produced by him, for each day's necessary attendance at the trial, the witness' lawful fees.

For each deposition lawfully taken by him and produced in evidence, $2.50.

For original documents, deeds, or papers of any kind produced by him, nothing.

For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies.

The lawful fees paid by him for service of the summons and other process in the action.

The lawful docket fee paid by him.

If the judgment is for the defendant, he may recover the following costs, and no others:

For each witness produced by him, for each day's necessary attendance at the trial, the witness' lawful fees.

For each deposition lawfully taken by him and produced in evidence, $2.50.

For original documents, deeds, or papers of any kind produced by him, nothing.

For official copies of such deeds or papers, the lawful fees necessarily paid for obtaining such copies.

The lawful fees paid by him for service of any process in the action.

Costs on continuance.

SEC. 560. CONTINUANCE, COSTS MAY BE IMPOSED AS CONDITION OF.—When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

When action dismissed for want of jurisdiction.

SEC. 561. WHEN ACTION DISMISSED FOR WANT OF JURISDICTION.—If an action is dismissed for want of jurisdiction, courts nevertheless shall have power to render judgment for costs as justice may require.

Security for costs.

SECURITY FOR COSTS

Plaintiff may be required to give.

SEC. 562. PLAINTIFF MAY BE REQUIRED TO GIVE.—The plaintiff in any civil suit or proceedings in the district court or in either of the magistrates' courts may be ruled to give security for the costs upon motion of the opposing party or of any officer of the court interested in the costs accruing in said suit; and it shall be the duty of the court to require the plaintiff to give such security for costs within a reasonable time thereafter and not later than ten days after the motion is presented to the court; and if the plaintiff shall fail to comply with the order of the court within the time prescribed by the court or judge thereof, the suit shall be dismissed.

CROSS REFERENCE

See also section 568.[1]

Additional undertakings by plaintiff.

SEC. 563. NEW OR ADDITIONAL UNDERTAKING BY PLAINTIFF; FORM OF SECURITY.—A new or additional undertaking may be ordered, within such time as the court or judge may prescribe, upon proof that the original undertaking is insufficient security, and failure on the part of the plaintiff to comply with the order of the court, or judge, within the time prescribed, shall cause the dismissal of the suit.

Nature of.

The security for costs required by this subchapter may consist of a money deposit, bond of a surety company, or cost bond with two or more good and sufficient sureties; the form of such security to be determined by the judge or magistrate of the court before whom the proceedings are pending. If personal security is furnished, the sureties must be residents of the Canal Zone, and no officer of the court or attorney practicing before the court shall be accepted as surety.

Bonds to authorize judgment for costs.

SEC. 564. BONDS, WHAT TO AUTHORIZE.—All bonds given as security for costs shall authorize judgment against all of the obligors of the said bonds, jointly and severally, for such costs, to be entered in the final judgment of the case or special proceedings.

Security not required from Government.

SEC. 565. SECURITY NOT REQUIRED FROM GOVERNMENT.—No security for costs shall be required of the United States, the Panama Canal, or any of its dependencies or from the public administrator of the Panama Canal.

Of intervenor or counterclaimant.

SEC. 566. SECURITY BY INTERVENOR OR COUNTERCLAIMANT.—The provisions of this subchapter, relating to security for costs, shall apply to an intervenor; and shall also apply to a defendant who seeks a judgment against the plaintiff on a counterclaim, after the defendant shall have discontinued his suit.

Security by attachment or other bond.

SEC. 567. COSTS SECURED BY ATTACHMENT OR OTHER BOND.—When the costs are secured by the provisions of an attachment or other bond, filed by the party required to give satisfactory security for costs, no further security shall be required.

CHAPTER 18.—WRITS OF REVIEW, MANDATE, AND PROHIBITION

WRITS OF REVIEW, MANDATE, AND PROHIBITION.

WRIT OF REVIEW

"Writ of review," defined.

SEC. 569. WRIT OF REVIEW DEFINED.—The writ of certiorari may be denominated the writ of review.

When granted.

SEC. 570. WHEN GRANTED BY DISTRICT COURT.—A writ of review may be granted by the district court, when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

Application for.

SEC. 571. APPLICATION FOR WRIT, HOW MADE.—The application must be made on the verified petition of the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Direction of.

SEC. 572. THE WRIT TO BE DIRECTED TO THE INFERIOR TRIBUNAL, ETC.—The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the clerk, if there be one, must return the writ with the transcript required.

Contents.

SEC. 573. CONTENTS OF THE WRIT.—The writ of review must command the party to whom it is directed to certify fully to the district

[1] So in original.

court, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

Stay of proceedings.

SEC. 574. PROCEEDINGS IN INFERIOR COURT MAY BE STAYED, OR NOT.—If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted, in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

Service.

SEC. 575. SERVICE OF THE WRIT.—The writ must be served in the same manner as a summons in civil action, except when otherwise expressly directed by the court.

Extent of review under.

SEC. 576. THE REVIEW UNDER THE WRIT, EXTENT OF.—The review upon this writ can not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.

Perfection of return of.

Hearing and judgment.

SEC. 577. A DEFECTIVE RETURN OF THE WRIT MAY BE PERFECTED; HEARING AND JUDGMENT.—If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below.

Copy of judgment to inferior court.

SEC. 578. COPY OF THE JUDGMENT MUST BE SENT TO THE INFERIOR TRIBUNAL.—A copy of the judgment, signed by the clerk, must be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceeding certified up.

Judgment-rolls.

SEC. 579. JUDGMENT-ROLLS.—A copy of the judgment, signed by the clerk, entered upon or attached to the writ and return, constitute the judgment-roll.

Writ of mandate.

WRIT OF MANDATE

Mandamus denominated as.

SEC. 580. MANDATE DEFINED.—The writ of mandamus may be denominated the writ of mandate.

Purpose for which issued.

SEC. 581. WHEN ISSUED BY DISTRICT COURT.—It may be issued by the district court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

When to issue.

SEC. 582. WRIT, WHEN AND UPON WHAT TO ISSUE.—The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.

Alternative or peremptory.

SEC. 583. WRIT MAY BE EITHER ALTERNATIVE OR PEREMPTORY; SUBSTANCE.—The writ may be either alternative or peremptory. The alternative writ must command the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted and a return-day inserted.

Effect of notice.

SEC. 584. IF THE APPLICATION BE WITHOUT NOTICE, THE ALTERNATIVE WRIT MAY ISSUE, OTHERWISE, THE PEREMPTORY; NOTICE AND DEFAULT.—When the application to the court is made without notice to the adverse party, and the writ is allowed, the alternative must be first

issued; but if the application is upon due notice and the writ is allowed, the peremptory may be issued in the first instance. With the alternative writ and also with any notice of an intention to apply for the writ, there must be served on each person against whom the writ is sought a copy of the petition. The notice of the application, when given, must be at least ten days. The writ can not be granted by default. The case must be heard by the court, whether the adverse party appears or not.

Answer under oath.

SEC. 585. THE ADVERSE PARTY MAY ANSWER UNDER OATH.—On the return of the alternative, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may answer the petition under oath, in the same manner as an answer to a complaint in a civil action.

Applicant not precluded thereby from objection to sufficiency of answer.

SEC. 586. APPLICANT NOT PRECLUDED BY ANSWER FROM OBJECTION TO ITS SUFFICIENCY.—On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

Hearing.

SEC. 587. HEARINGS BY COURT.—If no answer be made, the case must be heard on the papers of the applicant.

Recovery of damages.

SEC. 588. RECOVERY OF DAMAGES BY APPLICANT.—If judgment be given for the applicant, he may recover the damages which he has sustained as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

Service of.

SEC. 589. SERVICE OF THE WRIT.—The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body, is service upon the board or body, whether at the time of the service the board or body was in session or not.

Penalty for disobedience to.

SEC. 590. PENALTY FOR DISOBEDIENCE TO THE WRIT.—When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board, or person, if it appear to the court that any member of such tribunal, corporation, or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

Writ of prohibition.

WRIT OF PROHIBITION

Defined.

SEC. 591. WRIT OF PROHIBITION DEFINED.—The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.

Issue of.

SEC. 592. WHERE AND WHEN WRIT ISSUED.—It may be issued by the district court, to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

Either alternative or peremptory.

SEC. 593. WRIT MUST BE EITHER ALTERNATIVE OR PEREMPTORY; FORM OF.—The writ must be either alternative or peremptory. The alternative writ must command the party to whom it is directed to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the district court, and to show

cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, and so forth, must be omitted, and a return day inserted.

Provisions governing. *Ante*, p. 1010.

SEC. 594. CERTAIN PROVISIONS OF THE PRECEDING SUBCHAPTER APPLICABLE.—The provisions of sections 584 to 590 apply to this proceeding.

Issuance, return, and hearing.

ISSUANCE, RETURN, AND HEARING

Writs of review, mandate, and prohibition.

SEC. 595. WRITS OF REVIEW, MANDATE, AND PROHIBITION; ISSUANCE, RETURN, AND HEARING.—Writs of review, mandate, and prohibition issued by the district court, may, in the discretion of the court, be made returnable, and a hearing thereon be had at any time.

Rules of practice.

RULES OF PRACTICE

Ante, pp. 916-998, to govern.

SEC. 596. CERTAIN PRECEDING CHAPTERS APPLICABLE.—Except as otherwise provided in this chapter, the provisions of chapters 4 to 16 of this code are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

SUMMARY PROCEEDINGS.

CHAPTER 19.—SUMMARY PROCEEDINGS

Confession of judgment without action.

CONFESSION OF JUDGMENT WITHOUT ACTION

For debt due or contingent liability.

SEC. 597. JUDGMENT MAY BE CONFESSED FOR DEBT DUE OR CONTINGENT LIABILITY.—A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this subchapter. Such judgment may be entered in any court having jurisdiction for like amounts.

Statement in writing required.

SEC. 598. STATEMENT IN WRITING, AND FORM THEREOF.—A statement in writing must be made, signed by the defendant and verified by his oath, to the following effect:

Contents.

1. It must authorize the entry of judgment for a specified sum;

2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due, or to become due;

3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

Filing of statement and entering judgment, district court.

SEC. 599. FILING STATEMENT AND ENTERING JUDGMENT.—The statement must be filed with the clerk of the district court if the judgment is to be entered in that court, who must indorse upon it, and enter of record, a judgment of such court for the amount confessed, with $10 costs. The statement and affidavit, with the judgment indorsed, thereupon becomes the judgment-roll.

Magistrate's court.

SEC. 600. HOW, IN MAGISTRATES' COURTS.—In a magistrate's court, where the court has authority to enter the judgment, the statement may be filed with the magistrate, who must thereupon enter in his docket a judgment of his court for the amount confessed, with $3 costs.

Submitting controversy without action.

SUBMITTING A CONTROVERSY WITHOUT ACTION

By parties to question.

SEC. 601. CONTROVERSY, HOW SUBMITTED WITHOUT ACTION.—Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of

the same to any court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The court must thereupon hear and determine the case, and render judgment thereon, as if an action were depending.

Affidavit that controversy is real.

SEC. 602. JUDGMENT ON, AS IN OTHER CASES, BUT WITHOUT COSTS PRIOR TO NOTICE OF TRIAL.—Judgment must be entered as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment constitute the judgment roll.

Judgment on.

SEC. 603. JUDGMENT MAY BE ENFORCED OR APPEALED FROM AS IN AN ACTION.—The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

Enforcement of, and appeal from.

DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS

Persons imprisoned on civil process.

SEC. 604. PERSONS CONFINED MAY BE DISCHARGED.—Any person confined in jail, on an execution issued on a judgment rendered in a civil action, must be discharged therefrom upon the conditions in this subchapter specified.

Discharge of.

SEC. 605. NOTICE OF APPLICATION FOR DISCHARGE FROM PRISON.—Such person must cause a notice in writing to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the judge of the district court for the purpose of obtaining a discharge from his imprisonment.

Notice of application for.

SEC. 606. SERVICE OF NOTICE.—Such notice must be served upon the plaintiff, his agent, or attorney, one day at least before the hearing of the application.

Service of.

SEC. 607. EXAMINATION BEFORE JUDGE.—At the time and place specified in the notice, such person must be taken before such judge, who must examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and such judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Examination before judge.

SEC. 608. INTERROGATORIES MAY BE IN WRITING.—The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing, and the answer must be signed and sworn to by the prisoner.

Interrogatories.

SEC. 609. OATH TO BE ADMINISTERED.—If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to wit:

Oath.

"I, ——— ———, do solemnly swear that I have not any estate, real or personal, to the amount of $50, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay, or defraud my creditors, so help me God."

SEC. 610. ORDER OF DISCHARGE.—After administering the oath, the judge must issue an order that the prisoner be discharged from custody, and the officer, upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

Order of discharge.

SEC. 611. IF NOT DISCHARGED, PRISONER MAY AGAIN APPLY, WHEN.—If such judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding ten days, in the same

Additional applications for.

manner as above provided, and the same proceedings must thereupon be had.

Discharge final.

SEC. 612. DISCHARGE FINAL.—The prisoner, after being so discharged, is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having willfully sworn falsely upon his examination before the judge, or in taking the oath before prescribed.

Judgment to remain in force.

SEC. 613. JUDGMENT REMAINS IN FORCE.—The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

Discharge ordered by plaintiff.

SEC. 614. PLAINTIFF MAY ORDER DISCHARGE OF PRISONER, WHO SHALL NOT THEREAFTER BE LIABLE TO IMPRISONMENT FOR THE SAME CAUSE OF ACTION.—The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

Plaintiff to advance funds for support of prisoner.

SEC. 615. PLAINTIFF TO ADVANCE FUNDS FOR SUPPORT OF PRISONER.—Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent, or attorney must advance to the jailer, on such commitment, sufficient money for the support of the prisoner for one week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

Summary proceedings, possession of real property.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY IN CERTAIN CASES

CROSS REFERENCE

Vol. 42, p. 1004. U. S. C., p. 1641.

Magistrates' courts to have exclusive original jurisdiction of all actions for the forcible entry and detainer of real estate, see section 7 of the Panama Canal Act.

"Forcible entry," defined.

SEC. 616. FORCIBLE ENTRY DEFINED.—Every person is guilty of a forcible entry who either—

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

"Forcible detainer."

SEC. 617. FORCIBLE DETAINER DEFINED.—Every person is guilty of a forcible detainer who either—

1. By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

2. Who, in the nighttime, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

"Unlawful detainer."

SEC. 618. UNLAWFUL DETAINER DEFINED.—A tenant of real property, for a term less than life, is guilty of unlawful detainer:

By holding after termination of lease.

1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the

term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will it must first be terminated by notice, as prescribed in the Civil Code.

2. When he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment stating the amount which is due, or possession of the property, shall have been served upon him and if there is a subtenant in actual occupation of the premises, also upon such subtenant. After default in rent. Notice.

Such notice may be served at any time within one year after the rent becomes due.

3. When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there is a subtenant in actual occupation of the premises, also, upon such subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture: *Provided*, That if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease. After breach of covenant. Performance after notice. *Proviso.* When performance impossible.

A tenant may take proceedings, similar to those prescribed in this subchapter, to obtain possession of the premises let to a subtenant, in case of his unlawful detention of the premises underlet to him. Proceedings against subtenant.

4. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this subchapter. After subletting, etc., contrary to conditions of lease. Notice.

SEC. 619. SERVICE OF NOTICE.—The notices required by the preceding section may be served, either: Service of.

1. By delivering a copy to the tenant personally; or

2. If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or

3. If such place of residence and business can not be ascertained, or a person of suitable age or discretion there can not be found, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

SEC. 620. PARTIES DEFENDANT.—No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties Parties defendant.

defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant, but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by part two of section 618 upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action.

Married woman.

In case a married woman be a tenant, or a subtenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader, an execution issued upon a personal judgment against her can only be enforced against property on the premises at the commencement of the action.

Persons entering under tenant.

All persons who enter the premises under the tenant, after the commencement of the suit, shall be bound by the judgment, the same as if he or they had been made party to the action.

Ante, pp. 919-923, to govern.

SEC. 621. PARTIES GENERALLY.—Except as provided in the preceding section, the provisions of sections 86 to 110, relating to parties to civil actions, are applicable to this proceeding.

Verification of complaint.

SEC. 622. COMPLAINT MUST BE VERIFIED.—The plaintiff in his complaint, which shall be verified, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence, which may have accompanied the alleged forcible entry or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged is after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon.

Summons, form and service.

SEC. 623. SUMMONS, FORM AND SERVICE OF.—The summons must require the defendant to appear and answer within three days after the service of the summons upon him, and must notify him that if he fails to so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint. In all other respects the summons, or any alias summons in such proceedings, must be issued and served and returned in the same manner as summons in a civil action.

Arrest.

SEC. 624. ARREST.—If the complaint presented establishes, to the satisfaction of the magistrate, fraud, force, or violence, in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

Judgment by default.

SEC. 625. JUDGMENT BY DEFAULT.—If, at the time appointed, the defendant do not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

Appearance of defendant.

SEC. 626. DEFENDANT MAY APPEAR, AND SO FORTH.—On or before the day fixed for his appearance, the defendant may appear and answer or demur.

Proof of charge of forcible entry or detainer.

SEC. 627. SHOWING REQUIRED OF PLAINTIFF IN FORCIBLE ENTRY OR DETAINER; OF DEFENDANT.—On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceed-

Defense.

ings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

Amendment of complaint; continuances.

SEC. 628. COMPLAINT MUST BE AMENDED IN CERTAIN CASES; CONTINUANCE.—When, upon the trial of any proceeding under this subchapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the magistrate must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted upon account of such amendment unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

Judgment, declaration of.

SEC. 629. JUDGMENT, WHAT IT SHALL DECLARE.—If upon the trial the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

Assessment of damages.

ASSESSMENT OF DAMAGES.—The court shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. Judgment against the defendant guilty of the forcible entry, or forcible or unlawful detainer, may be entered in the discretion of the court either for the amount of the damages and rent found due, or for three times the amount so found.

Execution.

EXECUTION.—When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

Satisfaction of judgment.

SATISFACTION OF JUDGMENT.—But if payment as here provided be not made within five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Effect of appeal.

SEC. 630. EFFECT OF AN APPEAL UPON THE JUDGMENT.—An appeal taken by the defendant shall not stay proceedings upon the judgment unless the magistrate before whom the same was rendered so directs.

Rules of practice. *Ante*, pp. 916–998, to govern.

SEC. 631. RULES OF PRACTICE.—Except as otherwise provided in this subchapter the provisions of chapters 4 to 16 of this code are applicable to, and constitute the rules of practice in the proceedings mentioned in this subchapter.

Taking of appeal.

SEC. 632. APPEALS, HOW TAKEN, AND SO FORTH.—The provisions of sections 491 to 501 of this code, relative to appeals, except in so far as they are inconsistent with the provisions of this subchapter, apply to the proceedings mentioned in this subchapter.

Relief against forfeiture of lease.

SEC. 633. RELIEF AGAINST FORFEITURE OF LEASE.—The court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such

relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in section 629. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

CONTEMPTS.

CHAPTER 20.—CONTEMPTS

Summary punishment in certain cases.

SEC. 634. WHAT CONTEMPT OF COURT MAY BE PUNISHED SUMMARILY.—A person guilty of misbehavior in the presence of or so near a court, judge, or magistrate as to obstruct the administration of justice, including the refusal of a person present in court to be sworn as a witness or to answer as a witness when lawfully required, shall be guilty of contempt, which the court may punish summarily, by imprisonment in jail not exceeding ten days, or by fine not exceeding $100, or by both such fine and imprisonment.

Order adjudging guilt.

SEC. 635. ORDER ADJUDGING GUILT UNDER PRECEDING SECTION.—When a contempt under section 634 is committed, an order must be made, reciting the facts as occurring in such presence or proximity, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

Further contempts.

SEC. 636. WHAT OTHER ACTS ARE CONTEMPTS OF COURT.—A person guilty of any of the following acts may be punished as for contempt:

1. Disobedience of or resistance to a lawful writ, process, order, judgment, or command of the district or a magistrate's court, or injunction granted by the district court or judge;

2. Misbehavior of an officer of a court in the performance of his official duties, or in his official transactions;

3. A failure to obey a subpœna duly served;

4. The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

Affidavit of facts constituting.

SEC. 637. AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT.—When a contempt under section 636 is committed, an affidavit shall be presented to the court, judge, or magistrate of the facts constituting the contempt.

Warrant of attachment may issue.

SEC. 638. A WARRANT OF ATTACHMENT MAY ISSUE, OR A NOTICE TO SHOW CAUSE.—When a contempt under section 636 is committed, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

Notice to show cause.

Bail, as matter of right.

SEC. 639. BAIL MAY BE GIVEN BY A PERSON ARRESTED UNDER SUCH WARRANT.—Whenever a warrant of attachment is issued, pursuant to this chapter, the court, judge, or magistrate must direct, by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Arrest and detention by marshal, etc.

SEC. 640. MARSHAL OR CONSTABLE MUST, UPON EXECUTING THE WARRANT, ARREST AND DETAIN THE PERSON UNTIL DISCHARGED.—Upon executing the warrant of attachment, the marshal or constable must keep the person in custody, bring him before the court, judge, or

magistrate and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in section 641.

Bail bond.

SEC. 641. BAIL BOND, FORM AND CONDITIONS OF.—When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court, judge, or magistrate thereupon; or they will pay as may be directed, the sum specified in the warrant.

Return by officer.

SEC. 642. OFFICER MUST RETURN WARRANT AND UNDERTAKING, IF ANY.—The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Hearing.

SEC. 643. HEARING.—When the person arrested has been brought up or appeared, the court, judge, or magistrate must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Judgment, punishment.

SEC. 644. JUDGMENT AND PUNISHMENT, IF GUILTY.—The court shall determine whether the accused is guilty of contempt, and, if he be adjudged guilty, he may be fined not exceeding $100, or imprisoned not more than ten days, or both. If the contempt consists in the violation of an injunction, the person guilty of such contempt may also be ordered to make complete restitution to the party injured by such violation.

Imprisonment to enforce performance of act.

SEC. 645. IF THE CONTEMPT IS THE OMISSION TO PERFORM ANY ACT, THE PERSON MAY BE IMPRISONED UNTIL PERFORMANCE.—When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have [1] performed it, and in that case the act must be specified in the warrant of commitment.

Failure of defendant to appear.

SEC. 646. If A PARTY FAIL TO APPEAR, PROCEEDINGS.—When the warrant of arrest has been returned served, if the person arrested do not appear on the return-day, the court, judge, or magistrate may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceedings.

Illness sufficient excuse. Confinement under arrests for contempt.

SEC. 647. ILLNESS SUFFICIENT CAUSE FOR NONAPPEARANCE OF PARTY ARRESTED; CONFINEMENT UNDER ARRESTS FOR CONTEMPT.—Whenever, by the provisions of this chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court, judge, or magistrate, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant in jail, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

CHAPTER 21.—ESCHEAT OF PROPERTY

ESCHEAT OF PROPERTY.

What property escheats.

SEC. 648. WHAT PROPERTY ESCHEATS.—If an intestate decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision 8 of section 402

Post, p. 1179.

[1] So in original.

of the Civil Code, or if any person dies leaving any property in his estate not disposed of by will, and there are no persons entitled to succeed thereto under the laws of the Canal Zone, the same shall escheat to the United States.

Action to determine right of United States to property.

SEC. 649. ACTION TO DETERMINE RIGHT OF UNITED STATES TO ESCHEATED PROPERTY.—Whenever the district attorney is informed that any estate has escheated or is about to escheat to the United States or that the property involved in any action or special proceeding has escheated or is about to escheat to the United States, he may commence an action on behalf of the United States to determine its rights to said property or may intervene on its behalf in any action or special proceeding affecting any such estate and contest the rights of any claimant or claimants thereto. Such action shall be commenced by filing a petition.

Description.

DESCRIPTION OF PROPERTY.—There shall be set forth in such petition a description of the property, the name of the person last possessed thereof, the name of the person, if any, claiming such property, or any portion thereof, and the facts and circumstances by virtue of which it is claimed the property has escheated.

Order requiring appearance of interested parties to issue.

ORDER REQUIRING INTERESTED PARTIES TO APPEAR.—Upon the filing of such petition, the court must make an order requiring all persons interested in the estate to appear and show cause, if any there be, within sixty days from the date of the order, why such estate should not vest in the United States. Notice of such order must be given by posting in three public places in the Canal Zone for four successive weeks prior to the date set for the hearing. Upon the giving of such notice the court shall have full and complete jurisdiction over the estate, the property, and the person of everyone having or claiming any interest in the said property, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon.

Custody of property.

CUSTODY OF SUCH PROPERTY.—The property in such estates shall, in the discretion of the court, be sold in the manner provided in chapters 23 to 36 for the sale of property of a decedent's estate, and the proceeds deposited with the collector of the Panama Canal, to be held for a period of five years from the date of the judgment under section 650.

Joinder of parties and actions.

JOINDER OF PARTIES AND ACTIONS.—In any proceeding brought by the district attorney under this title any two or more causes of action may be joined in the same proceedings and in the same petition without being separately stated, and it shall be sufficient to allege in the petition that the decedent left no heirs to take the estate and the failure of the heirs to appear and set up their claims in any such proceeding, or in any proceeding for the administration of such estate, shall be sufficient proof upon which to base the judgment in any such proceeding or such decree of distribution.

Appearance, pleadings, and judgment.

SEC. 650. APPEARANCE, PLEADINGS, AND JUDGMENT.—All persons named in the petition may appear and answer, and traverse or deny the facts stated therein at any time before the time for answering expires, and any other person claiming an interest in such estate may appear and be made a defendant, by motion for that purpose in open court within the time allowed for answering, and if no such person appears and answers within the time, then judgment must be rendered that the United States is the owner of the property in such petition claimed;

Trial upon denial of title set up by United States.

But if any person appears and denies the title set up by the United States, or traverses any material fact set forth in the petition, the issue of fact must be tried as issues of fact are tried in civil actions.

If, after the issues are tried, it appears from the facts found or admitted that the United States has good title to the property in the petition mentioned, or any part thereof, judgment must be rendered that the United States is the owner and entitled to the possession thereof.

Claim to escheated property, by petition.

SEC. 651. CLAIM TO ESCHEATED PROPERTY.—Within five years after judgment in any proceeding had under this chapter, a person not a party or privy to such proceeding may file a petition in the district court, showing his claim or right to the property, or the proceeds thereof.

Verification, contents, etc.

Said petition shall be verified, and, among other things, must state the full name and the place and date of birth of the decedent; whether or not such decedent was ever married, and if so, where, when, and to whom; how, when, and where such marriage, if any, was dissolved; whether or not said decedent was ever remarried, and, if so, where, when, and to whom; the full names and the dates of birth of lineal descendents and ascendents and of all other known heirs, and the names and places of residence of all who are then surviving; and such other information as may be required by the court. If for any reason the petitioner is unable to set forth any of the matters or things hereinabove required, he shall clearly state such reason in his petition.

Service of.

A copy of such petition must be served on the district attorney at least twenty days before the hearing of the petition, who must answer the same;

Trial of issue.

And the court must thereupon try the issue as issues are tried in civil actions, and if it is determined that such person is entitled to the property, or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or if it has been sold and the proceeds paid to the Collector of the Panama Canal, then it must order the collector to pay the same.

Limitation on action.

All persons who fail to appear and file their petitions within the time limited are forever barred.

Proceeds from escheated property covered into Treasury.

SEC. 652. PROCEEDS OF PROPERTY TO BE COVERED INTO TREASURY.—If no claim to the property or the proceeds thereof is filed within the time specified in the preceding section, the court may, on application of the district attorney, direct that the proceeds be covered into the Treasury of the United States as miscellaneous receipts.

CHAPTER 22.—CHANGE OF NAMES

CHANGE OF NAMES.

Jurisdiction for.

SEC. 653. JURISDICTION.—Applications for change of names must be heard and determined by the district court.

Application.

SEC. 654. APPLICATION TO CHANGE NAME, MADE TO DISTRICT COURT.—All applications for change of names must be made to the division of the district court where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years of age, if a female, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend.

Minor, through parent, etc.

Contents of petition.

The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence.

Order to show cause

SEC. 655. ORDER TO SHOW CAUSE; PUBLICATION OF ORDER; PROOF OF PUBLICATION.—Upon the filing of the said petition the court shall thereupon make an order reciting the filing of the application, the name of the person by whom it is filed and the name proposed, and

directing all persons interested in said matter to appear before the court, at a time and place specified, not less than four or more than eight weeks from the time of making such order, to show cause why the application for change of name should not be granted. A copy of the order to show cause shall be posted by the clerk of the court in three of the most public places in the division in which the court is held, for a period of four successive weeks. Proof must be made to the satisfaction of the court, of such posting, at the time of the hearing of the application.

Publication.

Proof thereof.

ESTATES OF DECEDENTS.

CHAPTER 23.—JURISDICTION OF DISTRICT COURT OVER ESTATES OF DECEDENTS

Jurisdiction of district court over.

SEC. 656. JURISDICTION OF DISTRICT COURT OVER THE ESTATE, WHEN EXERCISED.—Wills must be proved, and letters testamentary or of administration granted—

1. In the division of the district court of which the decedent was a resident at the time of his death, in whatever place he may have died;

2. In the division in which the decedent may have died, leaving estate therein, he not being a resident of the Canal Zone;

3. In the division in which any part of the estate may be, the decedent having died out of the Canal Zone, and not resident thereof at the time of his death;

4. In the division in which any part of the estate may be, the decedent not being a resident of the Canal Zone, and not leaving estate in the division in which he died;

5. In all other cases, in the division where application for letters is first made:

Proviso. Probate matters handled by public administrator.

Provided, however, That all matters of probate handled by the public administrator may be conducted in the Balboa division, regardless of the residence of the decedent or the location of the estate.

Jurisdiction decided by application.

SEC. 657. WHEN JURISDICTION OF DISTRICT COURT OVER ESTATES DECIDED BY FIRST APPLICATION.—When the estate of the decedent is in more than one division, he having died out of the Canal Zone, and not having been a resident thereof at the time of his death, or being such nonresident, and dying within the Canal Zone, and not leaving estate in the division where he died, the division of the district court in which application is first made, for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

PROBATE OF WILLS.

CHAPTER 24.—PROBATE OF WILLS

Petition, notice, and proof.

PETITION, NOTICE, AND PROOF

Custodian to deliver will to district court.

SEC. 658. CUSTODIAN OF WILL TO DELIVER SAME TO WHOM; PENALTY.—Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the division of the district court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by anyone injured thereby.

Penalty on failure.

Petition for probate.

SEC. 659. WHO MAY PETITION FOR PROBATE OF WILL.—Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the division of the court having jurisdiction to have the will proved, whether the same be in writing, in his possession or not, or is lost or

destroyed, or beyond the jurisdiction of the Canal Zone, or a nuncupative will.

Contents.

SEC. 660. WHAT PETITION FOR PROBATE OF WILL MUST SHOW.—A petition for the probate of a will must show:

1. The jurisdictional facts;

2. Whether the person named as executor consents to act, or renounces his right to letters testamentary;

3. The names, ages, and residences of the heirs, legatees, and devisees of the decedent, so far as known to the petitioner;

4. The probable value and character of the property of the estate;

5. The name of the person for whom letters testamentary are prayed.

No defect of form or in the statement of jurisdictional facts actually existing, shall make void the probate of a will.

Forfeiture of right to letters by executor.

SEC. 661. WHEN EXECUTOR FORFEITS RIGHT TO LETTERS.—If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper division of the court for the probate of the will, and that letters testamentary be issued to him, he may be held to have renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

Possession of will by third party.

SEC. 662. POSSESSION OF WILL BY THIRD PERSON; PRODUCTION OF.—If it is alleged in any petition that any will is in the possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it at a time named in the order. If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may by warrant from the court be committed to jail, and be kept in close confinement until he produces it.

Order for production to issue.

Notice of petition.

SEC. 663. NOTICE OF PETITION FOR PROBATE OF WILLS, HOW GIVEN.—When the petition is filed, and the will produced, the clerk of the court must set the petition for hearing by the court upon some day not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by such clerk by publishing the same in a newspaper of general circulation in the Canal Zone. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication; and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included.

Notice of time for probate.

SEC. 664. NOTIFICATION OF TIME FOR PROBATE OF WILL.—Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator and the devisees and legatees named in the will at their places of residence, if known to the petitioner, and deposited in the post office, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them, and deposited in the post office at the place where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also, to any person named as coexecutor not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of hearing is equivalent to mailing.

Production of wills and attendance of witnesses.

SEC. 665. ORDER TO ENFORCE PRODUCTION OF WILLS OR ATTENDANCE OF WITNESSES.—The judge of the district court may at any time make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses.

Hearing proof of will.

SEC. 666. HEARING PROOF OF WILL AFTER PROOF OF SERVICE OF NOTICE.—At the time appointed for the hearing, or the time to which the hearing may have been postponed, the court, unless the parties appear, must require proof that the notice has been given, which being made, the court must hear testimony in proof of the will.

Contest of will.

SEC. 667. WHO MAY APPEAR AND CONTEST THE WILL.—Any person interested may appear and contest the will. Devisees, legatees, or heirs of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate by the party so represented, if commenced within the time provided in section 682; nor does the nonappointment of an attorney by the court of itself invalidate the probate of a will.

Probate, when uncontested.

SEC. 668. PROBATE OF WILLS NOT CONTESTED.—If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution. If it appears at the time fixed for the hearing that none of the subscribing witnesses reside in the Canal Zone, but that the deposition of one of them can be taken elsewhere, the court may direct it to be taken, and may authorize a photographic copy of the will to be made and to be presented to such witnesses on his examination, who may be asked the same questions with respect to it and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present. If neither the attendance in court nor the deposition of any of the subscribing witnesses can be procured, the court may admit the will to probate upon the testimony of any other witness as provided in section 675.

Clerk's record.

SEC. 669. CLERK'S RECORD.—When the court admits a will to probate it must be recorded in the minutes by the clerk, with the notation: "Admitted to probate (giving date)."

Olographic wills, proof of.

SEC. 670. OLOGRAPHIC WILLS.—An olographic will may be proved in the same manner that other private writings are proved.

Probate of, detained outside Zone.

SEC. 671. PROBATE OF WILL DETAINED OUTSIDE ZONE.—If it is alleged in any petition that any will of any person who at the time of his death was a resident of the Canal Zone is detained beyond the jurisdiction of the zone, in a court of any State or foreign country, and that such will can not be produced for probate in the zone, and the court is satisfied that the allegations are true, a copy of the will duly authenticated may be proved, allowed, and admitted to probate in the zone in lieu of the original will, and have the same force and effect as the original will. The same proof shall be required in order to admit the will to probate in the zone as would be required under the provisions of this chapter if the original will were produced.

Authenticated copy admissible.

Subscribing witnesses may testify upon photographic copy.

The court may authorize a photographic copy of the will to be presented to the subscribing witness upon his examination in court, or by deposition as provided in section 668, and such witness may be asked the same questions with respect to it, and the handwriting of himself, the testator, and the other witness, as would be pertinent and competent if the original will were present.

CONTESTING PROBATE OF WILL

Contesting probate.

Grounds of, to be filed.

SEC. 672. CONTESTANTS TO FILE GROUNDS OF CONTEST, AND PETITIONER TO REPLY.—If anyone appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the Canal Zone interested in the estate, any one or more of whom may demur thereto, upon any of the grounds of demurrer provided for in sections 135 to 139. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing, or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving:

Demurrer thereto.

Answer.

Issues of fact involved.

1. The competency of the decedent to make a last will and testament;

2. The freedom of the decedent at the time of the execution of the will from duress, menace, fraud, or undue influence;

3. The due execution and attestation of the will by the decedent or subscribing witnesses; or,

4. Any other questions substantially affecting the validity of the will;

Right to trial by jury.

Must, on request of either party in writing (filed at least ten days prior to the day set for the hearing), be tried by a jury. If no jury is demanded, the court must try and determine the issues joined. On the trial, the contestant is plaintiff and the petitioner is defendant.

Impanelling, etc., of jury.

SEC. 673. HOW JURY OBTAINED AND TRIAL HAD.—When a jury is demanded, the district court must impanel a jury to try the case, in the manner provided for impaneling trial juries in said court, and the trial must be conducted in accordance with the provisions of sections 279 to 303. A trial by the court must be conducted as provided in sections 304 to 307.

Verdict and judgment thereon.

SEC. 674. VERDICT OF THE JURY; JUDGMENT.—The jury, after hearing the case, must return a special verdict upon the issues submitted to them by the court, upon which the judgment of the court must be rendered, either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses must be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs must be recorded.

Witnesses, examination of, etc.

SEC. 675. WITNESSES, WHO AND HOW MANY TO BE EXAMINED; PROOF OF HANDWRITING ADMITTED, WHEN.—If the will is contested, all the subscribing witnesses who are present in the Canal Zone, and who are of sound mind, must be produced and examined; and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the Canal Zone at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Proof of handwriting

Testimony reduced to writing as evidence.

SEC. 676. TESTIMONY REDUCED TO WRITING FOR FUTURE EVIDENCE.—The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from the Canal Zone.

Certificate to be attached to will, if proved.

SEC. 677. IF PROVED, CERTIFICATE TO BE ATTACHED.—If the court is satisfied, upon the proof taken, or from the facts found by the jury, that the will was duly executed, and that the testator at the

time of its execution was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, a certificate of the proof and the facts found, signed by the judge and attested by the seal of the court, must be attached to the will.

Filing and recording.

SEC. 678. WILL AND PROOF TO BE FILED AND RECORDED.—The will, and a certificate of the proof thereof, must be filed and recorded by the clerk, and the same, when so filed and recorded, shall constitute part of the record in the cause or proceeding. All testimony shall be filed by the clerk.

Foreign wills.

PROBATE OF FOREIGN WILLS

Probated in any State or foreign country to be allowed and recorded.

SEC. 679. WILLS PROVED IN STATES OR FOREIGN COUNTRIES.—All wills duly proved and allowed in any State of the United States, or in any foreign country or State, may be allowed and recorded in the division of the district court in which the testator shall have left any estate, or shall have been a resident, at the time of his death.

Probate of.

SEC. 680. PROBATE OF FOREIGN WILL.—When a copy of the will, and the order or decree admitting same to probate, duly authenticated, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the clerk of the court must appoint a time for the hearing; notice whereof must be given as hereinbefore provided for an original petition for the probate of a will.

Hearing proofs of.

SEC. 681. HEARING PROOFS OF PROBATE OF FOREIGN WILL.—If, on the hearing, it appears upon the face of the record that the will has been proved, allowed, and admitted to probate in any State of the United States, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of the Canal Zone, it must be admitted to probate, and have the same force and effect as a will first admitted to probate in the zone, and letters testamentary or of administration issued thereon.

Contesting will after probate.

CONTESTING WILL AFTER PROBATE

Limitation.

SEC. 682. THE PROBATE MAY BE CONTESTED WITHIN ONE YEAR.—When a will has been admitted to probate, any person interested may, at any time within one year after such probate, contest the same or the validity of the will. For that purpose he must file in the division of the court in which the will was proved a petition in writing, containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

Citation to interested parties.

SEC. 683. CITATION TO BE ISSUED TO PARTIES INTERESTED.—Upon filing the petition, and within one year after such probate, a citation must be issued to the executor of the will, or to the administrator with the will annexed, and to all the legatees and devisees mentioned in the will, and heirs residing in the Canal Zone, so far as known to the petitioner or to their guardians, if any of them are minors, or to their personal representatives, if any of them are dead, requiring them to appear before the court on some day therein specified, to show cause why the probate of the will should not be revoked.

Hearing, on proof of service.

SEC. 684. THE HEARING HAD ON PROOF OF SERVICE.—At the time appointed for showing cause, or at any time to which the hearing is postponed, proof having been made of service of the citation upon

all of the persons named therein, the court must proceed to try the issues of fact joined in the same manner as an original contest of a will.

Triable by jury or court.

SEC. 685. PETITIONS TO REVOKE PROBATE OF WILL TRIED BY JURY OR COURT; JUDGMENT, WHAT.—In all cases of petitions to revoke the probate of a will, wherein the original probate was granted without a contest, on written demand of either party, filed three days prior to the hearing, a trial by jury must be had, as in cases of the contest of an original petition to admit a will to probate. If, upon hearing the proofs of the parties, the jury shall find, or, if no jury is had, the court shall decide, that the will is for any reason invalid, or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

Judgment thereon.

Powers of executor to cease on revocation of probate.

SEC. 686. ON REVOCATION OF PROBATE, POWERS OF EXECUTOR, AND SO FORTH, CEASE, BUT NOT LIABLE FOR ACTS IN GOOD FAITH.—Upon the revocation being made, the powers of the executor or administrator with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

No liability for acts in good faith.

Costs and expenses.

SEC. 687. COSTS AND EXPENSES, BY WHOM PAID.—The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will or probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

Probate, when conclusive.

SEC. 688. PROBATE, WHEN CONCLUSIVE; ONE YEAR AFTER REMOVAL OF DISABILITY GIVEN TO INFANTS AND OTHERS.—If no person, within one year after the probate of a will, contest the same or the validity thereof, the probate of the will is conclusive; saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Saving period to infants and lunatics.

PROBATE OF LOST OR DESTROYED WILL

Lost or destroyed will.

Proof of.

SEC. 689. PROOF OF LOST OR DESTROYED WILL TO BE TAKEN.—Whenever any will is lost or destroyed, the district court must take proof of the execution and validity thereof and establish the same; notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Matter to be shown.

Proviso.

Will destroyed when testator insane.

SEC. 690. PROBATE OF WILLS LOST; PUBLIC CALAMITY.—No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or by public calamity destroyed in the lifetime of the testator, without his knowledge, or unless its provisions are clearly and distinctly proved by at least two credible witnesses: *Provided, however*, That if the testator be committed to any hospital for the insane in the Canal Zone and after such commitment his last will and testament be destroyed by public calamity, and the testator is never restored to competency, then after the death of the said testator, his said last will may be probated as though it were in existence at the time of the death of the testator.

Certification and recordation.

Letters thereon granted.

Preservation of testimony.

SEC. 691. TO BE CERTIFIED, RECORDED, AND LETTERS THEREON GRANTED.—When a lost will is established, the provisions thereof must be distinctly stated and certified by the judge, under his hand and seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration, with the will annexed, must be issued thereon in the same manner as upon wills produced and duly proved. The testimony must be reduced to writing, signed, certified, and filed as in

other cases, and shall have the same effect as evidence as provided in section 676.

Restraint of injurious acts of executors, etc., during proceedings.

SEC. 692. COURT TO RESTRAIN INJURIOUS ACTS OF EXECUTORS OR ADMINISTRATORS DURING PROCEEDINGS TO PROVE LOST WILL.—If, before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors, so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Nuncupative will.

PROBATE OF NUNCUPATIVE WILL

Probate of.

SEC. 693. NUNCUPATIVE WILLS, WHEN AND HOW ADMITTED TO PROBATE.—Nuncupative wills may at any time, within six months after the testamentary words are spoken by the decedent, be admitted to probate, on petition and notice as provided in sections 658 to 671. The petition, in addition to the jurisdictional facts, must allege that the testamentary words or the substance thereof were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Ante, pp. 1022-1024.

Additional requirements for.

SEC. 694. ADDITIONAL REQUIREMENTS IN PROBATE OF NUNCUPATIVE WILLS.—The district court must not receive or entertain a petition for the probate of a nuncupative will until the lapse of ten days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife (if any), and all other persons resident in the Canal Zone interested in the estate are notified as hereinbefore provided.

Contests, appointments, to conform to provisions.

SEC. 695. CONTESTS AND APPOINTMENTS TO CONFORM TO PROVISIONS AS TO OTHER WILLS.—Contests of the probate of nuncupative wills and appointments of executors and administrators of the estate devised thereby must be had, conducted, and made as hereinbefore provided in cases of the probate of written wills.

EXECUTORS AND ADMINISTRATORS.

CHAPTER 25.—EXECUTORS AND ADMINISTRATORS, THEIR LETTERS, BONDS, REMOVALS, AND SUSPENSIONS

Letters testamentary, etc.

LETTERS TESTAMENTARY AND OF ADMINISTRATION WITH THE WILL ANNEXED, HOW AND TO WHOM ISSUED

Trust companies eligible as executors.

SEC. 696. TRUST COMPANIES AS EXECUTORS.—Corporations or associations authorized to conduct the business of a trust company in the Canal Zone may be appointed to act as an executor, administrator, guardian of estates, assignee, receiver, depositary, or trustee in like manner as individuals.

Oath, by officer of corporation.

OATH.—In all cases in which it is required that an executor, administrator, guardian of estates, assignee, receiver, depositary or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation if such oath be taken and subscribed or such affidavit be made by the president, vice-president, secretary, manager, trust officer, or assistant trust officer; provided, any such appointment as guardian shall apply to the estate only, and not to the person.

Appointment as guardian to apply to estate only.

Issue of letters.

SEC. 697. ISSUE OF LETTERS.—If no objection is made as provided in section 700, the court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named therein as executors who are competent to discharge the trust, unless they or either of them have renounced their right to letters.

Persons incompetent as executor.

SEC. 698. WHO INCOMPETENT AS EXECUTOR.—No person is competent to serve as executor who, at the time the will is admitted to probate, is:

1. Under the age of majority;
2. Convicted of an infamous crime;
3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

When no executor named, etc.

SEC. 699. WHEN NO EXECUTOR IS NAMED IN WILL.—If no executor is named in the will, or if the sole executor or all the executors therein named are dead, or incompetent, or renounce, or fail to apply for letters, or to appear and qualify, letters of administration with the will annexed must be issued as designated and provided for in granting of letters in case of intestacy.

To proceed as in intestacy.

Objections by interested parties.

SEC. 700. INTERESTED PARTIES MAY FILE OBJECTIONS.—Any person interested in the estate or will may file objections in writing to granting letters testimentary to the persons named as executors or any of them, and the objections must be heard and determined by the court; a petition may, at the same time, be filed for letters of administration with the will annexed.

Married woman as executrix.

SEC. 701. MARRIED WOMAN MAY BE EXECUTRIX.—A married woman may be appointed an executrix. The authority of an executrix, who was unmarried when appointed, is not extinguished nor affected by her marriage.

Executor of an executor.

SEC. 702. EXECUTOR OF AN EXECUTOR.—No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator, left unadministered, must be issued.

Letters of administration.

Granting of, when person named minor, or absent from Zone.

SEC. 703. LETTERS OF ADMINISTRATION WHERE MINOR EXECUTOR.—Where a person absent from the Canal Zone, or a minor, is named executor—if there is another executor who accepts the trust and qualifies—the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration, with the will annexed, must be granted; but the court may, in its discretion, revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

Validity of acts of portion of executors.

SEC. 704. ACTS OF A PORTION OF EXECUTORS VALID.—When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust, required by the will, as effectually for every purpose as if all were appointed and should act together; where there are two executors or administrators, the act of one alone shall be effectual, if the other is absent from the Canal Zone, or laboring under any legal disability from serving, or if he has given his co-executor or co-administrator authority, in writing, to act for both; and where there are more than two executors or administrators, the act of a majority is valid.

Authority of administrators, c. t. a.

SEC. 705. AUTHORITY OF ADMINISTRATORS WITH WILL ANNEXED; LETTERS, HOW ISSUED.—Administrators with the will annexed have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the clerk of the court, and bear the seal thereof.

Form of letters.

FORM OF LETTERS

Letters testamentary.

SEC. 706. FORM OF LETTERS TESTAMENTARY.—Letters testamentary must be substantially in the following form:

"Canal Zone, ——— division

"The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the ——— division of the district court, C. D., who is named therein as such, is hereby appointed executor.

"Witness, G. H., clerk of the district court, with the seal of the court affixed the ——— day of ———, A. D., 19—.

"[SEAL.]

"By order of the court:

"G. H., Clerk."

Letters of administration, c. t. a.

SEC. 707. FORM OF LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED.—Letters of administration, with the will annexed, must be substantially in the following form:

"Canal Zone, ——— division

"The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the ——— division of the district court, and there being no executor named in the will (or as the case may be), C. D. is hereby appointed administrator with the will annexed.

"Witness, G. H., clerk of the district court, with the seal of the court affixed, the —— day of ———, A. D., 19—.

"[SEAL.]

"By order of the court:

"G. H., Clerk."

Letters of administration.

SEC. 708. FORM OF LETTERS OF ADMINISTRATION.—Letters of administration must be signed by the clerk, under the seal of the court, and substantially in the following form:

"Canal Zone, ——— division

"C. D. is hereby appointed administrator of the estate of A. B., deceased.

"[SEAL.]

"Witness, G. H., clerk of the district court, with the seal thereof affixed, the —— day of ———, A. D. 19—.

"By order of the court:

"G. H., Clerk."

To whom, and order in which granted.

LETTERS OF ADMINISTRATION, TO WHOM AND THE ORDER IN WHICH THEY ARE GRANTED

Order of.

SEC. 709. ORDER OF PERSONS ENTITLED TO ADMINISTER.—Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, the relatives of the deceased being entitled to administer only when they are entitled to succeed to his estate or some portion thereof; and they are, respectively, entitled thereto in the following order:

1. The surviving husband or wife, or some competent person whom he or she may request to have appointed.

2. The children.
3. The father and mother.
4. The brothers and sisters.
5. The grandchildren.
6. The next of kin entitled to share in the distribution of the estate.
7. The public administrator.
8. The creditors.
9. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate. This section shall apply to the relatives of the previously deceased spouse of decedent when entitled to succeed to some portion of the estate under subdivision 8 of section 402 of the Civil Code.

Relatives of whole blood entitled to preference.

SEC. 710. RELATIVES OF WHOLE BLOOD PREFERRED TO HALF BLOOD.—Of several persons claiming and equally entitled to administer, relatives of the whole blood must be preferred to those of the half blood.

Discretion in court with respect to parties equally eligible, etc.

SEC. 711. IN DISCRETION OF COURT TO APPOINT ADMINISTRATOR, WHEN.—When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters the court may, in its discretion, at the request of another creditor, grant letters to any other person legally competent.

When minor or incompetent entitled.

SEC. 712. WHEN MINOR OR INCOMPETENT ENTITLED, WHO APPOINTED ADMINISTRATOR.—If any person entitled to administration is a minor, or an incompetent person, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

Persons incompetent to act.

SEC. 713. WHO ARE INCOMPETENT TO ACT AS ADMINISTRATORS.—No person is competent or entitled to serve as administrator or administratrix who is:

1. Under the age of majority.
2. Not a bona fide resident of the Canal Zone.
3. Convicted of an infamous crime.
4. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Married woman as administratrix.

SEC. 714. MARRIED WOMAN MAY BE ADMINISTRATRIX.—A married woman may be appointed administratrix. When an unmarried woman appointed administratrix marries, her authority is not thereby extinguished.

Letters and action thereon.

PETITION AND CONTEST FOR LETTERS AND ACTION THEREON

Petition for.

SEC. 715. PETITION FOR LETTERS, HOW MADE.—Petitions for letters of administration must be in writing, signed by the applicant or his counsel, and filed with the clerk of the court, stating the facts essential to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residences of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts exist, and are proved at the hearing but are not fully set forth in the petition, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments.

Granting of.

SEC. 716. LETTERS OF ADMINISTRATION, WHEN GRANTED.—Letters of administration may be granted by the court at any time appointed

for the hearing of the application, or at any time to which the hearing is continued or postponed.

Notice of hearing on.

SEC. 717. DATE FOR AND NOTICE OF HEARING.—When a petition praying for letters of administration is filed, the clerk of the court must set the petition for hearing by the court, and give notice thereof by causing a notice to be posted at the courthouse which notice shall contain the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least ten days before the hearing. The clerk shall cause similar notice to be mailed to the heirs of the decedent named in the petition, at least ten days before the hearing, addressed to them at their respective post-office addresses, as set forth in the petition, otherwise at the place where the proceedings are pending.

Contest of.

SEC. 718. CONTESTING APPLICATION.—Any person interested may contest the petition, by filing written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to the administration and pray that letters be issued to himself. In the latter case the contestant must file a petition and give the notice required for an original petition, and the court must hear the two petitions together.

Hearing of application.

SEC. 719. HEARING OF APPLICATION.—On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

Evidence of notice.

SEC. 720. EVIDENCE OF NOTICE.—An entry in the minutes of the court, that the required proof was made and notice given, shall be conclusive evidence of the fact of such notice.

Grant to any applicant.

SEC. 721.—GRANT TO ANY APPLICANT.—Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuing of letters to themselves.

Proofs before grant of letters.

SEC. 722. WHAT PROOFS MUST BE MADE BEFORE GRANTING LETTERS OF ADMINISTRATION.—Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others: and the court may also examine any other person concerning the time, place, and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left any will, and may compel any person to attend as a witness for that purpose.

Letters granted to other than those entitled.

SEC. 723. LETTERS MAY BE GRANTED TO OTHERS THAN THOSE ENTITLED.—Administration may be granted to one or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled, filed in the court. When the person entitled is a nonresident of the Canal Zone, affidavits, taken ex parte before any officer authorized by the laws of the Canal Zone to take acknowledgment and administer oaths out of the Canal Zone, may be received as prima facie evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

Requests for special notice of proceedings.

SEC. 724. REQUESTS FOR SPECIAL NOTICE OF PROCEEDINGS; GIVING NOTICES; FINDING REGARDING NOTICES.—At any time after the issuance of letters testamentary or of administration upon the estate of any decedent, any person interested in said estate, whether as heir, devisee, legatee or creditor, or the attorney for any such person may serve upon the executor or administrator, or upon the attorney for the executor or administrator, and file with the clerk of the court wherein administration of such estate is pending, a written

request, stating that he desires special notice of any or all of the following mentioned matters, steps or proceedings in the administration of said estate, to wit:

(1) Filing of petitions for sales, leases or mortgages and confirmation of sales of any property of the estate;

(2) Filing of accounts;

(3) Filing of petitions for distribution;

(4) Filing of petitions for partition of any property of the estate.

Such request shall state the post-office address of the person making same.

Giving of notices.

GIVING OF NOTICES.—And thereafter a brief notice of the filing of any of such petitions, or accounts, except petitions for sale of perishable property or other personal property which will incur expense or loss by keeping, shall be addressed to such person making such request, or his attorney, at his stated post-office address, and deposited in the post office with the postage thereon prepaid, within two days after the filing of such petition or account; or personal service of such notices may be made on the person making such request or his attorney, within said two days, and such personal service shall be equivalent to such deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of such petition or account.

Finding regarding notices.

FINDING REGARDING NOTICES.—If upon the hearing it shall appear to the satisfaction of the court that said notice has been regularly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive upon all persons.

United States as party, etc.

SEC. 725. UNITED STATES AS A PARTY TO ESTATES, PROCEEDINGS, ETC.—Where compensation, pensions, insurance or other allowance is made or awarded by the United States Government or a department or bureau thereof, to estates of decedents or to minor or incompetent persons for whom guardians have been appointed, or to their estates, the department or bureau of the United States Government making or awarding such allowance, compensation, pension, or insurance shall have the same right to commence and prosecute actions on executors, administrators, and guardians' bonds, and shall have the same right to petition the court for appointment or removal of guardians of minor and incompetent persons, and shall have the same right to file exceptions in writing to accounts of executors, administrators, and guardians and to contest same, as is provided in this code for interested parties, heirs at law, and relatives.

Revocation of letters, etc.

REVOCATION OF LETTERS, AND PROCEEDINGS THEREFOR

Proceedings; petition.

SEC. 726. REVOCATION OF LETTERS OF ADMINISTRATION.—When letters of administration have been granted to any other person than the surviving husband or wife, child, father, mother, brother, or sister of the intestate, any one of them who is competent, or any competent person at the written request of any one of them, may obtain the revocation of the letters, and be entitled to the administration, by presenting to the court a petition praying the revocation, and that letters of administration may be issued to him.

Citation to issue.

SEC. 727. WHEN PETITION FILED, CITATION TO ISSUE.—When such petition is filed, the clerk must, in addition to the notice provided in section 717, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Hearing of petition.

SEC. 728. HEARING OF PETITION FOR REVOCATION.—At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties;

and if the right of the applicant is established, and he is competent, letters of administration must be granted to him, and the letters of the former administrator revoked.

Assertion of prior rights of relatives.

SEC. 729. PRIOR RIGHTS OF RELATIVES ENTITLE THEM TO REVOKE PRIOR LETTERS.—The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister of the intestate; or any of such relatives, when letters have been granted to any other of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in sections 726 to 728.

Ante, p. 1033.

Oaths and bonds, executors and administrators.

OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS

Oath; recording letters.

SEC. 730. OATH OF EXECUTOR OR ADMINISTRATOR; RECORDING LETTERS.—Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters. All letters testamentary and of administration, with the affidavits and certificates thereon, must be forthwith recorded by the clerk of the court, in books to be kept by him in his office for that purpose.

Bond.

SEC. 731. BOND OF EXECUTOR OR ADMINISTRATOR.—Every person to whom letters testamentary or of administration are directed to issue, must, before receiving them, execute a bond to the government of the Canal Zone, with two or more sufficient sureties, to be approved by the district court, or the judge thereof. In form the bond must be joint and several, and the penalty shall be in such reasonable sum as the court shall direct.

Conditions of.

SEC. 732. CONDITIONS OF BONDS.—The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Separate bonds, when more than one administrator, required.

SEC. 733. SEPARATE BONDS, WHEN MORE THAN ONE ADMINISTRATOR.—When two or more persons are appointed executors or administrators, the district court, or the judge thereof, must require and take a separate bond from each of them.

Several recoveries on same bond.

SEC. 734. SEVERAL RECOVERIES MAY BE HAD ON SAME BOND.—The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Justification of sureties.

SEC. 735. JUSTIFICATION OF SURETIES.—In all cases where bonds or undertakings are required to be given, under chapters 23 to 36, the sureties must justify thereon in the same manner and in like amounts as required by section 533, and the certificate thereof must be attached to and filed with the bond or undertaking. All such bonds and undertakings must be approved by the judge of the district court before being filed. Upon filing, the clerk shall thereupon enter in the register of actions the date and amount of such bond or undertaking and the name or names of the surety or sureties thereon. In the event of the loss of such bond or undertaking, such entries so made shall be prima facie evidence of the due execution of such bond or undertaking as required by law.

Citation and requirements of judge on deficient bond.

SEC. 736. CITATION AND REQUIREMENTS OF JUDGE ON DEFICIENT BOND; ADDITIONAL SECURITY.—Before the judge approves any bond required under chapters 23 to 36, and after its approval, he may, of his own motion, or upon the motion of any person interested in the estate, supported by affidavit that the sureties, or some one or more of them, are not worth as much as they have justified to, order a citation to issue requiring such sureties to appear before him at

a designated time and place, to be examined touching their property and its value; and the judge must, at the same time, cause a notice to be issued to the executor or administrator requiring his appearance on the return of the citation; and on its return he may examine the sureties and such witnesses as may be produced, touching the property of the sureties and its value; and if, upon such examination, he is satisfied that the bond is insufficient, he must require sufficient additional security.

Additional security required.

SEC. 737. RIGHT CEASES WHEN SUFFICIENT SECURITY NOT GIVEN.—If sufficient security is not given within the time fixed by the judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

Upon failure to give sufficient security, right to cease.

SEC. 738. WHEN BOND MAY BE DISPENSED WITH.—When it is expressly provided in the will that no bond shall be required of the executor, letters testamentary may issue without any bond, unless the court, for good cause, require one to be executed; but the executor may at any time afterwards (if it appear from any cause necessary or proper) be required to file a bond, as in other cases.

Bond dispensed with.

SEC. 739. PETITION SHOWING FAILING SURETIES AND ASKING FOR FURTHER BONDS.—Any person interested in an estate may, by verified petition, represent to the district court, or the judge thereof, that the sureties of the executor or administrator thereof have become, or are becoming, insolvent, or that they have removed, or are about to remove, from the Canal Zone, or that from any other cause the bond is insufficient, and ask that further security be required.

Failing sureties; further bonds.

SEC. 740. CITATION TO EXECUTOR, ETC., TO SHOW CAUSE AGAINST SUCH APPLICATION.—If the court, or the judge thereof, is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator requiring him to appear, at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return-day. If he has absconded, or can not be found, it may be served by leaving a copy of it at his place of residence, or by such publication as the court, or the judge thereof, may order.

Citation to executor, etc., to show cause against application.

SEC. 741. FURTHER SECURITY MAY BE ORDERED.—On the return of the citation, or at such other time as the judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is, from any cause, insufficient, he may make an order requiring the executor or administrator to give further security, or to file a new bond in the usual form within a reasonable time, not less than five days.

Further security ordered.

SEC. 742. NEGLECTING TO OBEY ORDER.—If the executor or administrator neglects to comply with the order within the time prescribed, the judge must, by order, revoke his letters, and his authority must thereupon cease.

Neglect to obey order, letters revoked.

SEC. 743. SUSPENDING POWERS OF EXECUTOR, AND SO FORTH.—When a petition is presented praying that an executor or administrator be required to give further security, or to give bond, where, by the terms of the will, no bond was originally required, and it is alleged, on oath, that the executor or administrator is wasting the property of the estate, the judge may, by order, suspend his powers until the matter can be heard and determined.

Suspension of executor's, etc., powers.

SEC. 744. FURTHER SECURITY ORDERED WITHOUT APPLICATION OF PARTY IN INTEREST.—When it comes to his knowledge that the bond of any executor or administrator is from any cause insufficient, the judge, without any application, must cause him to be cited to appear

Further security on initiative of judge.

and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

Release of sureties.

SEC. 745. RELEASE OF SURETIES.—When a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application to the district court, or the judge thereof, for relief. The court or judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place, to be therein specified, and to give other security. If he has absconded, left, or removed from the Canal Zone, or if he can not be found, after due diligence and inquiry, service may be made as provided in section 740.

New sureties.

SEC. 746. NEW SURETIES.—If new sureties be given to the satisfaction of the judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator.

Neglect to give, to act as forfeiture of letters.

SEC. 747. NEGLECT TO GIVE NEW SURETIES FORFEITS LETTERS.—If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the judge, on the return of the citation, or within such reasonable time as the judge shall allow, unless the surety making the application shall consent to a longer extension of time, the court or judge must, by order, revoke his letters.

Time of acting on applications.

SEC. 748. APPLICATIONS TO BE DETERMINED AT ANY TIME.—The applications authorized by the nine preceding sections of this chapter may be heard and determined at any time. All orders made therein must be entered upon the minutes of the court.

Liability on bond.

SEC. 749. LIABILITY ON BOND.—The liability of principal and sureties upon the bond of any executor, administrator, or guardian, is in all cases to pay in the kind of money or currency in which the principal is legally liable.

Special administrators; powers and duties.

SPECIAL ADMINISTRATORS, AND THEIR POWERS AND DUTIES

When appointed.

SEC. 750. SPECIAL ADMINISTRATOR, WHEN APPOINTED.—When there is delay in granting letters testamentary or of administration from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an executor or administrator dies, or is suspended, or removed, the district court or judge, must appoint a special administrator to collect and take charge of the estate of the decedent in whatever division the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate; or he may direct the public administrator to take charge of the estate.

Appointment of, issuance of letters.

SEC. 751. APPOINTMENT OF—ISSUANCE OF LETTERS.—The appointment may be made at any time upon such notice to such of the persons interested in the estate as the court may deem reasonable. After the person appointed has given bond, the clerk must issue special letters of administration to such person.

Preference in appointment.

SEC. 752. PREFERENCE IN APPOINTMENT.—In making the appointment of a special administrator the court must give preference to the person entitled to letters testamentary, or of administration.

Bond and oath.

SEC. 753. BOND AND OATH OF.—Before any letters issue to any special administrator, except to the public administrator, he must give bond in such sum as the court or judge may direct, with sureties to the satisfaction of the court or judge, conditioned for the faithful performance of his duties; and he must take the usual oath, and have the same indorsed on his letters.

Powers and duties.

SEC. 754. POWERS AND DUTIES.—The special administrator must collect and preserve for the executor or administrator, all the goods,

chattels, debts, and effects of the decedent, all incomes, rents, issues, and profits, claims, and demands of the estate; must take the charge and management of, enter upon, and preserve from damage, waste, and injury, the real estate, and for any such and all necessary purposes may commence and maintain or defend suits and other legal proceedings as an administrator; he may sell such perishable property as the court may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but except when appointed with the powers, duties, and obligations of a general administrator, as hereinafter provided, he is not liable to an action by any creditor on a claim against the decedent.

Special administrator, pending court action on estate.

When a special administrator is appointed pending determination of a contest of a will instituted prior to the probate thereof, or pending an appeal from an order appointing, suspending, or removing an executor or administrator, such special administrator shall have the same powers, duties, and obligations as a general administrator, and the letters of administration issued to him shall recite that such special administrator is appointed with the powers of a general administrator.

Powers, duties, etc., of.

Termination of power, etc.

SEC. 755. WHEN LETTERS TESTAMENTARY OR OF ADMINISTRATION ARE GRANTED, SPECIAL ADMINISTRATOR'S POWERS CEASE.—When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

Account to be rendered.

SEC. 756. ACCOUNT.—The special administrator must render an account on oath of his proceedings in like manner as other administrators are required to do.

Fees of.

Proviso.

Limitation on.

Post, p. 1058.

His fees and those of his attorney shall be fixed by the court: *Provided, however*, That the total fees paid to the special administrator and executor, or to the special administrator and general administrator of an estate must not, together, exceed the sums provided for in section 858, including the further allowance therein provided; and that the total fees paid to the attorneys both of the special administrator and executor, or of the special administrator and general administrator, must not, together, exceed the sums provided for in section 859, including the further allowance therein provided.

Total fees allowable.

Limitation on.

Post, p. 1059.

Division of.

And when the same person does not act as both special administrator and executor, or as special administrator and general administrator, of the estate, such fees shall be divided between the special administrator and executor, or between the special administrator and general administrator of the estate, in such proportions as the court shall determine to be just and reasonable.

Attorney's fees.

And when the same attorney does not act for both the special administrator and executor, or for the special administrator and general administrator of the estate, such fees shall be divided between the attorneys in such proportion as the court shall determine to be just and reasonable.

Payment of secured debts.

SEC. 757. PAYMENT OF SECURED DEBTS BY SPECIAL ADMINISTRATORS.—If it shall appear by the verified petition of any special administrator, or other person interested in any estate in the charge of any special administrator, that any of the property of said estate is subject to any mortgage, lien or deed of trust, to secure the payment of money, and that any amount so secured, either principal or interest, is past due and unpaid; that the holder of the security threatens or is about to enforce or foreclose the same and that the

said property exceeds in value the amount of the entire obligation thereon, and an order is asked directing or permitting said special administrator to pay all or any part of the amount so secured, the court or judge shall fix a time for the hearing of said petition and shall direct notice of not less than ten days to be given by posting in three public places and by personal service on all parties who have appeared or their attorneys. At the time so appointed, if the allegations of such petition shall be proven to the satisfaction of the court and it shall appear to be for the best interests of said estate, the court may order the special administrator to pay interest or other portions or the whole of the secured debt, and, in its discretion, may direct the special administrator to take proceedings to secure funds for such purpose. Any such order for payment of interest may also direct that interest not yet accrued be paid as it becomes due and such order shall remain in effect and cover such future interest until and unless thereafter for good cause set aside or modified by the court upon similar petition and notice to that hereinabove provided.

By court order.

Interest.

Will found subsequently.

WILLS FOUND AFTER LETTERS OF ADMINISTRATION GRANTED AND MISCELLANEOUS PROVISIONS

Letters revoked on admission to probate.

SEC. 758. PREEXISTING GRANT OF LETTERS, WHEN REVOKED.—Upon the admission to probate of a will after a grant of letters of administration on the ground of intestacy, or upon the admission to probate of a later will than the one before admitted to probate, the preexisting grant of letters testamentary or of administration must be revoked, and the administrator or executor whose grant of authority is thus terminated must render an account of his administration within such time as the court may direct.

Powers of executor.

SEC. 759. POWER OF EXECUTOR IN SUCH A CASE.—In such case, the executor or the administrator with the will annexed is entitled to demand, sue for, recover, and collect all the rights, goods, chattels, debts, and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Remaining administrator or executor.

SEC. 760. REMAINING ADMINISTRATOR OR EXECUTOR TO CONTINUE WHEN HIS COLLEAGUES ARE DISQUALIFIED.—In case any one of several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust; or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

When no executor, etc., competent.

SEC. 761. WHO TO ACT WHEN ALL ACTING ARE INCOMPETENT.—If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the court must issue letters of administration, with the will annexed or otherwise, to the widow or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

Resignation.

SEC. 762. EXECUTOR OR ADMINISTRATOR MAY RESIGN, WHEN; COURT TO APPOINT SUCCESSOR; LIABILITY OF OUTGOER.—Any executor or administrator may, at any time, by writing, filed in the district court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the court shall appoint

to receive the same. If, however, by reason of any delays in such settlement and delivery up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration. The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected by such appointment or resignation.

Appointment of successor.

Liability of person resigning.

SEC. 763. ALL ACTS OF EXECUTOR, AND SO FORTH, VALID UNTIL HIS POWER IS REVOKED.—All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Validity of executor's acts, etc.

SEC. 764.—TRANSCRIPT OF COURT MINUTES TO BE EVIDENCE.—A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the clerk, under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

Court minutes as evidence.

DISQUALIFICATION OF JUDGE

Disqualification of judge.

When interested party.

SEC. 765.—WHEN JUDGE NOT TO ACT.—No will shall be admitted to probate, or letters testamentary or of administration granted, before any judge who is interested as next of kin to the decedent, or as a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or is in any other manner interested or disqualified from acting.

REMOVALS AND SUSPENSIONS IN CERTAIN CASES

Removals and suspensions.

For fraud, waste, etc.

SEC. 766. SUSPENSION OF POWERS OF EXECUTOR OR ADMINISTRATOR.—Whenever the district judge has reason to believe from his own knowledge, or from credible information, that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act, or has removed or is about to remove from the Canal Zone, or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, direct such executor or administrator to be cited to appear and show cause why his letters should not be revoked, and may also suspend the powers of such executor or administrator, until the matter is investigated.

Revocation of letters for cause.

SEC. 767.—REVOCATION OF LETTERS.—If the executor or administrator fails to appear in obedience to the citation, or, if he appears, and the court is satisfied from the evidence, that there exists cause for his removal, his letters must be revoked.

Hearing, interested parties may appear.

SEC. 768. ANY PARTY INTERESTED MAY APPEAR ON HEARING.—At the hearing, any person interested in the estate may appear and file his allegations in writing, showing that the executor or administrator should be removed; to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

Notice to absconding executors, etc.

SEC. 769. NOTICE TO ABSCONDING EXECUTORS AND ADMINISTRATORS.—If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Canal Zone, notice may be given him of the pendency of the proceedings by publication, in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

Power to compel attendance of executor, etc.

SEC. 770. MAY COMPEL ATTENDANCE.—In the proceedings authorized by the preceding sections of this subchapter, for the removal of an executor or administrator, the court may compel his attendance by attachment, and may compel him to answer questions, on oath, touching his administration, and, upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

INVENTORY AND COLLECTION OF EFFECTS OF DECEDENTS.

CHAPTER 26.—INVENTORY AND COLLECTION OF EFFECTS OF DECEDENTS

INVENTORY, APPRAISEMENT, AND POSSESSION OF ESTATE

Inventory, appraisement, possession of estate.

Return of inventory and appraisement to court.

SEC. 771. INVENTORY AND APPRAISEMENT TO BE RETURNED.—Every executor or administrator must make and return to the court, within thirty days after his appointment, a true inventory, and, also, if the court so direct, an appraisement of all the estate of the decedent which has come to his possession or knowledge.

Appointment of appraisers.

SEC. 772. APPRAISERS OF ESTATES OF DECEASED PERSONS.—To make the appraisement, the court or judge must appoint three disinterested persons, any two of whom may act.

Compensation.

Each of said appraisers is entitled to receive from each estate he appraises, as compensation for his services, such sum as may be fixed by the court or judge.

Account of services, etc.

The appraisers or appraiser must, with the inventory, file a verified account of their or his services and disbursements.

Ineligible parties.

No clerk or deputy, nor any person related by consanguinity or affinity to or connected by marriage with, or being a partner or employee of the judge of the court, shall be appointed or shall be competent to act as appraiser in any estate, or matter or proceeding pending before said judge or in said court.

Oath of appraisers.

SEC. 773. OATH OF APPRAISERS; INVENTORY MUST SHOW WHAT.—Before proceeding to the execution of their duty, the appraisers must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them, according to the best of their knowledge and ability.

Inventory.

They must then proceed to estimate and appraise the property; each item of property must be set down separately, with the value thereof in dollars and cents in figures, opposite the items respectively.

Contents.

The inventory must contain all the estate of the decedent, real and personal, a statement of all debts, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each debt or security, the date, the sum originally payable, the indorsement thereon (if any), with their dates, and the sum which, in the judgment of the appraisers, may be collected on each debt or security; and a statement of the interest of the decedent in any partnership of which he was a member, to be appraised as a single item.

Interest of decedent in property.

The inventory must also show, so far as the same can be ascertained by the executor or administrator, what portion of the property is community property, and what portion is the separate property of the decedent.

Inventory to account for moneys.

SEC. 774. INVENTORY TO ACCOUNT FOR MONEYS; IF ALL MONEY, NO APPRAISEMENT NECESSARY.—The inventory must also contain an account of all moneys belonging to the decedent which have come

to the hands of the executor or administrator, and if none, the fact must be so stated in the inventory.

Effect of naming debtor executor.

SEC. 775. EFFECT OF NAMING A DEBTOR EXECUTOR.—The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claim must be included in the inventory, and the executor is liable for the same, as for so much money in his hands, when the debt or demand becomes due.

Discharge, etc., of debt against.

Not discharge as against creditors.

SEC. 776. DISCHARGE OR BEQUEST OF DEBT AGAINST EXECUTOR.—The discharge or bequest in a will, of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the debt or demand. It must be included in the inventory, and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

Inventory must be signed.

Oath by executor, etc., as to contents.

SEC. 777. TO MAKE OATH TO INVENTORY.—The inventory must be signed by the appraisers, if any there be, and the executor or administrator must take and subscribe an oath, before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge and possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be indorsed upon or annexed to the inventory.

Revocation of letters for neglect.

SEC. 778. LETTERS MAY BE REVOKED FOR NEGLECT OF ADMINISTRATOR.—If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or judge shall, for reasonable cause, allow, the court may, upon notice, revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Afterdiscovered property.

Appraisal and inventory.

SEC. 779. INVENTORY OF AFTERDISCOVERED PROPERTY.—Whenever property not mentioned in an inventory that is made and filed, comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this subchapter, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced, after notice, by attachment or removal from office.

Possession of estate.

SEC. 780. EXECUTOR ENTITLED TO POSSESS ALL OF ESTATE OF DECEDENT.—The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate until the estate is settled or until delivered over by the order of the court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings and fixtures thereon which are under his control. After the expiration of the time for the presentation of claims, he is not entitled to recover the possession of any property of the estate from any heir, who has succeeded to the property in his possession or from any devisee, or legatee, to whom the property has been devised or bequeathed, or from the assignee of any such heir, devisee, or legatee, unless he proves that the same is necessary for the payment of debts or legacies, or of expenses of administration already accrued, or for distribution to some other heir, devisee, or legatee entitled thereto. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate, or for the purpose of quieting title to the same,

against anyone except the executor or administrator; but this section shall not be so construed as requiring them so to do.

Surrender of real estate.

SEC. 781. EXECUTOR OR ADMINISTRATOR TO DELIVER REAL ESTATE TO HEIRS OR DEVISEES.—Unless it satisfactorily appear to the court that the rents, issues, and profits of the real estate for a longer period are necessary to be received by the executor or administrator, wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, the court at the end of the time limited for the presentation of claims against the estate, must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

Embezzlement and surrender of property of estate.

EMBEZZLEMENT AND SURRENDER OF PROPERTY OF ESTATE

Liability of embezzler.

SEC. 782. EMBEZZLING EFFECTS OF A DECEDENT.—If any person embezzles, conceals, smuggles, or fraudulently disposes of any of the moneys, goods, chattels, or effects of a decedent, he is chargeable therewith, and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled, concealed, smuggled, or fraudulently disposed of, to be recovered for the benefit of the estate.

Citation of person suspected.

SEC. 783. CITATION TO PERSON SUSPECTED OF EMBEZZLEMENT, CONCEALMENT, AND SO FORTH, OF PROPERTY.—If any executor, administrator, or other person interested in the estate of a decedent, complains to the district court or judge, on oath, that any person is suspected to have concealed, embezzled, smuggled, or fraudulently disposed of any moneys, goods, or chattels of the decedent, or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, or any claim or demand, or any lost will, the said court or judge may cite such person to appear before such court, and may examine him on oath upon the matter of such complaint. But if he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

Penalty for failure to obey.

SEC. 784. REFUSAL TO OBEY CITATION, PENALTY FOR, AND FOR EMBEZZLEMENT; MAY BE COMPELLED TO DISCLOSE BY IMPRISONMENT; LIABLE FOR DOUBLE DAMAGES.—If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint, the court may, by warrant for that purpose, commit him to jail, there to remain in close custody until he submits to the order of the court or is discharged according to law. If, upon such examination, it appears that he has concealed, embezzled, smuggled, or fraudulently disposed of any moneys, goods, or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidences of or tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand, or any lost will of the decedent, the court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to jail, there to remain until the order is complied with, or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court. In addition to the examination of the party, witnesses may be produced and examined on either side.

Discovery of property.

Citation of persons intrusted with estate.

SEC. 785. PERSONS INTRUSTED WITH ESTATE OF DECEDENT MAY BE CITED TO ACCOUNT.—The district court or judge, upon the complaint, on oath, of any executor or administrator, may cite any person who

has been intrusted with any part of the estate of the decedent to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER 27.—PROVISION FOR THE SUPPORT OF THE FAMILY

SUPPORT OF FAMILY OF DECEDENT.

Possession of furniture and apparel.

SEC. 786. WIDOW AND MINOR CHILDREN MAY REMAIN IN POSSESSION OF FURNITURE AND APPAREL.—When a person dies leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the district court or judge.

CROSS REFERENCE

Clothing of decedent and household effects not exceeding in value $2,500 to go to surviving wife without administration, see Civil Code, section 418. *Post*, p. 1181.

Property exempt from execution set aside for, on petition.

SEC. 787. ALL PROPERTY EXEMPT FROM EXECUTION TO BE SET APART FOR USE OF FAMILY.—Upon the return of the inventory, or at any subsequent time during the administration, the court may, on petition therefor, set apart for the use of the surviving husband or wife, or, in case of his or her death, to the minor children of the decedent, all the property exempt from execution.

Hearing on, notice.

SEC. 788. NOTICE OF HEARING; TO WHOM SENT.—When the petition mentioned in section 787 is filed the clerk of the court must set the petition for hearing by the court and give notice thereof by causing notices to be posted in at least three public places in the division, one of which must be at the place where the court is held, containing the name of the decedent, the name of the petitioner, the nature of the application, and the time at which the same will be heard. Such notice must be given at least ten days before the hearing, and a copy thereof must be mailed at least ten days before the day appointed for the hearing to the executor or administrator, if he be not the petitioner, and to any person named as coexecutor or coadministrator not petitioning, and upon the attorney of any person who has appeared or given notice of appearance (by an attorney) in the estate as heir, legatee, devisee, next of kin, or creditor, or as otherwise interested, addressed to them at their places of residence, or office, if known, and if not known, then to the place where the proceedings are pending. Proof of such posting and mailing must be made at the hearing.

Extra allowance.

SEC. 789. COURT MAY MAKE EXTRA ALLOWANCE.—If the property set apart is insufficient for the support of the widow and children, or either, the court or judge must take such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate, which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

Payment of, preferential.

SEC. 790. PAYMENT OF ALLOWANCE.—Any allowance made by the court or judge, in accordance with the provisions of this chapter, must be paid in preference to all other charges; except funeral

charges and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court or judge, take effect from the death of the decedent.

Apportionment of property.

SEC. 791. PROPERTY SET APART, HOW APPORTIONED.—When property is set apart to the use of the family, in accordance with the provisions of this chapter, such property, if the decedent left a surviving spouse and no minor child, is the property of such spouse. If the decedent left also a minor child or children, the one half of such property belongs to the surviving spouse, and the remainder to the child, or in equal shares to the children, if there are more than one. If there is no surviving spouse, the whole belongs to the minor child or children.

Administration when estate does not exceed $1,000.

SEC. 792. ADMINISTRATION OF ESTATE NOT EXCEEDING $1,000 IN VALUE.—If a deceased person leave a widow or minor child or minor children and upon the return of the inventory of the estate of such deceased person it shall appear to the court or judge by the verified petition of the personal representative of such deceased person or his widow or of the guardian of his minor children or of any of them that the net value of the whole estate of said deceased over and above all liens or encumbrances of record at the date of the death of said deceased does not exceed the sum of $1,000, not including the property excepted from administration under section 418 of the Civil Code, the court, or judge, shall, by order, require all persons interested to appear on a day fixed to show cause why the whole of said estate should not be assigned for the use and support of the family of the deceased.

Post, p. 1181.

Notice of hearing.

Ante, p. 1043.

NOTICE OF HEARING.—Notice thereof shall be given and proceedings had in the same manner as provided in section 788.

Proceedings.

PROCEEDINGS ON HEARING.—If upon the hearing, the court finds that the net value of the estate over and above all liens or encumbrances of record at the date of the death of said deceased does not exceed the sum of $1,000, not including the property excepted from administration under section 418 of the Civil Code, it shall, by decree for that purpose, assign to the widow of the deceased, if there be a widow, or if there be no widow, then to the minor children of the deceased, if there be minor children, the whole of the estate, subject to whatever mortgages, liens, or encumbrances there may be upon said estate at the time of the death of said deceased, after the payment of the expenses of the last illness of the deceased, funeral charges, and expenses of administration, and the title thereof shall vest absolutely in such widow, if there is a widow, or if there is no widow, in the minor children or child, subject to whatever mortgages, liens or encumbrances there may be upon said estate at the time of the death of the deceased, and there must be no further proceedings in the administration, unless further estate be discovered.

When all property to go to children.

SEC. 793. WHEN ALL PROPERTY TO GO TO CHILDREN.—If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this chapter, the whole property so set apart must go to the minor children.

CLAIMS AGAINST ESTATE.

CHAPTER 28.—CLAIMS AGAINST ESTATE

Notice to creditors, by publication.

SEC. 794. NOTICE TO CREDITORS OF DECEDENTS' ESTATES.—Every executor or administrator must, immediately after his letters are issued, cause to be published in some newspaper of general circulation in the Canal Zone, a notice to the creditors of the decedent, requiring all persons having claims against said decedent to file them, with the necessary vouchers, in the office of the clerk of the court, or to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business to be specified in the notice.

Such notice must be published not less than once a week for four weeks. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such filing or presentation: *Provided, however*, That the publication may in the discretion of the court, be dispensed with, in which event the court may direct notice by posting in three public places in the Canal Zone for a period of four weeks.

Proviso.
May be dispensed with, in discretion of court.

Time expressed in notice.

SEC. 795. TIME EXPRESSED IN THE NOTICE.—The time expressed in the notice must be ten months after its first publication, when the estate exceeds in value the sum of $10,000, and four months when it does not.

Copy of notice to be filed.

SEC. 796. FILING COPY OF PRINTED NOTICE TO CREDITORS.—Within thirty days after the first publication of notice to creditors, the executor or administrator must file or cause to be filed in the court a copy of said notice to creditors accompanied by a statement, setting forth the date of the first publication thereof and the name of the newspaper in which the same is printed, or the dates and places of posting, if the posting of notices be directed.

Recording decree of notice.

SEC. 797. RECORDING DECREE OF NOTICE TO CREDITORS.—After the notice is given, as required by section 794, a copy thereof, with the affidavit of due publication or posting, must be filed and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to creditors has been given, and directing that such order or decree be entered in the minutes, must be made by the court.

Unfiled claims barred.

SEC. 798. CLAIMS NOT FILED ARE BARRED.—All claims arising upon contracts, whether the same be due, not due, or contingent, and all claims for funeral expenses and expenses of the last sickness must be filed or presented within a time limited in the notice, and any claim not so filed or presented is barred forever: *Provided, however*, That when it is made to appear by the affidavit of the claimant to the satisfaction of the court, or judge, that the claimant had no notice as provided in this chapter, by reason of being out of the Canal Zone, it may be filed or presented at any time before a decree of distribution is entered.

Proviso.
Claimants without notice.

Description of claim.

A brief description of every claim filed must be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

Affidavit on, required.

SEC. 799. CLAIMS MUST BE SWORN TO.—Every claim which is due, when filed with the clerk, or presented to the executor or administrator, must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when filed or presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths.

Additional proof.

The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim.

Rate of interest allowable.

No greater rate of interest shall be allowed upon any claim after its approval by the administrator or executor and judge than is allowed on judgments obtained in the district court.

Filing of.

SEC. 800. CLAIMS TO BE ALLOWED OR REJECTED.—When a claim, accompanied by the affidavit required in this chapter, has been filed with the clerk, the executor or administrator must allow or reject

Presentation of allowed claim to court.

Action by judge.

Procedure when claim presented to executor, etc., before filing.

it, and his allowance or rejection thereof must be in writing and filed with the clerk. If the executor or administrator so allow the claim after filing, the clerk must, immediately after the filing of such allowance, present the claim, together with the allowance, to the judge, and must at the time of such presentation indorse on the claim the date thereof. The judge must indorse upon the claim so filed his allowance or rejection, with the date thereof. When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator before filing, he must indorse thereon his allowance or rejection, with the day and date thereof. If he allows the claim so presented, it must be presented to the judge for his approval, who must in the same manner indorse upon it his allowance or rejection, and, if allowed, it must, within thirty days thereafter, be filed with the clerk.

Failure of executor, etc., to act.

REFUSAL OR NEGLECT OF EXECUTOR TO ALLOW OR REJECT CLAIM.—If, where a claim has been filed without presentation, the executor or administrator refuse or neglect to file such allowance or rejection for ten days after the claim has been filed, or if, where a claim has been presented before filing, the executor or administrator refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, or if the judge refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day; and if the presentation be made before filing by a notary, the certificate of such notary, under seal, shall be prima facie evidence of such presentation and the date thereof.

Action on, when filed after expiration of time.

ACTING ON CLAIM AFTER EXPIRATION OF TIME TO PRESENT.—If the claim be filed with the clerk, or presented to the executor or administrator, before the expiration of the time limited for the filing or presentation of claims, the same is filed or presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time.

Payable in particular kind of money.

CLAIM PAYABLE IN PARTICULAR KIND OF MONEY.—If the claim is payable in a particular kind of money or currency, it shall, if allowed, be payable only in such money or currency.

Effect of allowance.

EFFECT OF ALLOWANCE.—Every claim allowed by the executor or administrator and approved by the judge shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

Entry of date of allowance.

ENTRY OF DATE OF ALLOWANCE.—The dates of allowance of every such claim, together with the amount allowed, must be entered in the register by the clerk after the allowance thereof by the judge.

Original instrument need not be filed.

Verified copies.

SEC. 801.—ORIGINAL INSTRUMENT NEED NOT BE FILED WITH CLAIM.—If the claim be founded on a bond, bill, note, or any other instrument, the original need not be filed or presented, but a verified copy of such instrument with all indorsements must be attached to the statement of the claim and filed therewith, and the original instrument must be exhibited, if demanded by the executor or administrator or judge, unless it be lost or destroyed, in which case the claimant must accompany his claim when filed or presented by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction.

Mortgages and liens.

If the claim, or any part thereof, be secured by a mortgage or other lien which has been recorded in the office of the Registrar of Property, it shall be sufficient to describe the mortgage or lien, and refer to the date, volume, and page of its record.

If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed with the clerk, he may withdraw the same, when a copy thereof has been already, or is then, attached to his claim. Withdrawal of original vouchers, etc.

SEC. 802. REJECTION OF CLAIM AGAINST ESTATES.—When a claim is rejected either by the executor or administrator, or the judge, written notice of such rejection shall be given by the executor or administrator to the holder of such claim or to the person filing or presenting the same, and the holder must bring suit in the proper court against the executor or administrator within three months after the date of service of such notice if the claim be then due or within two months after it becomes due, otherwise the claim shall be forever barred. Rejection of. Suit thereon, must be brought.

If the residence of the claimant is not known, and the same shall be made to appear to the satisfaction of the court, the court shall by its order require the notice to be served on the claimant by filing with the clerk. Notice by filing with clerk.

SEC. 803. CLAIMS BARRED BY STATUTE.—No claim must be allowed by the executor or administrator, or by the district judge, which is barred by the statute of limitations. When a claim is presented to the judge for his allowance, he may, in his discretion, examine the claimant and others, on oath, and hear any legal evidence touching the validity of the claim. Claims barred by statute.

ALLOWED CLAIMS NOT AFFECTED BY STATUTE OF LIMITATIONS.—No claim against any estate which has been filed and allowed, or presented and allowed, is affected by the statute of limitations, pending the proceedings for the settlement of the estate. Allowed claims not affected by statute of limitations.

SEC. 804. ACTIONS ON CLAIMS.—No holder of any claim against an estate shall maintain any action thereon, unless the claim is first filed with the clerk, or presented to the executor or administrator, except in the following case: An action may be brought by any holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint, but no counsel fees shall be recovered in such action unless such claim be so filed or presented. Actions on.

SEC. 805. TIME OF LIMITATION.—The time during which there shall be a vacancy in the administration must not be included in any limitations herein prescribed. Time of limitation.

SEC. 806. ACTION PENDING AT DECEDENT'S DEATH.—If an action is pending against the decedent at the time of his death, the plaintiff must in like manner file his claim with the clerk, or present it to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of such filing or presentation. Actions pending at decedent's death.

SEC. 807. ALLOWANCE IN PART.—Whenever the executor or administrator or the judge shall act upon any claim that may be filed with the clerk, or presented to the executor or administrator, and is willing to allow the same in part, he must state in his allowance the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor brought against the executor or administrator, unless he recover a greater amount than that offered to be allowed. Partial allowance.

SEC. 808. EFFECT OF JUDGMENT AGAINST EXECUTOR.—A judgment rendered against an executor or administrator, upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner as if it had been allowed by the executor or administrator and the judge; and the judgment must be that Effect of judgment against executor.

the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the original docket of the judgment must be filed among the papers of the estate in court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

Against decedent.

SEC. 809. JUDGMENT AGAINST DECEDENT.—When any judgment has been rendered for or against the testator or intestate in his lifetime, no execution shall issue thereon after his death, except as provided in section 355. A judgment against the decedent for the recovery of money must be filed with the clerk, or presented to the executor or administrator, like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from any sale under foreclosure, or execution, in like manner and with like effect as if the judgment debtor were still living.

Ante, p. 970.

Disputed claims referred to referee.

SEC. 810. DISPUTED CLAIM MAY BE REFERRED TO REFEREE.—If the executor or administrator doubts the correctness of any claim presented to him or filed with the clerk, he may enter into an agreement in writing with the claimant to refer the matter in controversy to some disinterested person, to be approved by the court or judge. Upon filing the agreement and approval of such court or judge, in the office of the clerk of the court, the clerk must enter a minute of the order referring the matter in controversy to the person so selected, or, if the parties consent, a reference may be had in the court; and the report of the referee, if confirmed, establishes or rejects the claim the same as if it had been allowed or rejected by the executor or administrator and judge.

Trial by, confirmation, and effect.

SEC. 811. TRIAL BY REFEREE, HOW CONFIRMED, AND ITS EFFECT.—The referee must hear and determine the matter, and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation and subject to the same control, as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by ordinary process.

Liability of executor, etc., for costs.

SEC. 812. LIABILITY OF EXECUTOR, AND SO FORTH, FOR COSTS.—When a judgment is recovered, with costs, against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Executor, etc., as claimant.

SEC. 813. EXECUTOR'S CLAIM.—If the executor or administrator is a creditor of the decedent, his claim duly authenticated by affidavit shall be filed with the clerk, and must be presented by the clerk for allowance or rejection to the judge, who shall allow or reject it, and its allowance by the judge is sufficient evidence of its correctness, and it must be paid as other claims in due course of administration. If, however, the judge reject the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the

judge, who may appoint an attorney, at the expense of the estate, to defend the action. If the claimant recover no judgment, he must pay all costs, including defendant's reasonable attorney's fees, to be fixed by the court.

Removal of executor, if notice not given to creditors.

SEC. 814. EXECUTOR NEGLECTING TO GIVE NOTICE TO CREDITORS, TO BE REMOVED.—If an executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

Statement of claims to be filed.

SEC. 815. STATEMENT OF CLAIMS AGAINST ESTATE.—At the same time at which he is required to return an inventory, the executor or administrator must also return a statement of all claims against the estate which have been filed with the clerk, or presented to the executor or administrator, if so required by the court, or judge, and from time to time thereafter he must present a statement of claims subsequently so filed or presented, if so required by the court or judge. In all such statements he must designate the names of the creditors, the nature of each claim, when it became due, or will become due, and whether it was allowed or rejected by him, or not yet acted upon.

Payment of debts bearing interest.

SEC. 816. PAYMENT OF DEBTS BEARING INTEREST.—If there be any debt of the decedent bearing interest, whether filed or not, or whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid.

When claimant can not be found.

SEC. 817. WHEN CLAIMANT CAN NOT BE FOUND; DEPOSIT WITH COLLECTOR.—Whenever any claim has been filed or presented and shall have been approved by the executor or administrator and by the judge, but the same has not been paid, and the estate is in all other respects ready to be closed, if it be made to appear to the satisfaction of the court or judge, by affidavit, or by testimony, taken in open court, that the same can not be, and has not been, paid because the claimant can not be found, the court or judge shall make an order fixing the amount of said claim, with interest, if any, and directing the executor or administrator to deposit the amount with the collector of the Panama Canal, who shall give a receipt for the same, and who shall be liable upon his official bond therefor. Such executor or administrator shall at once make the deposit in accordance with such order of court and shall forthwith proceed to close up and settle such estate. Upon the final settlement of his accounts, the receipt of such collector shall be received as a proper voucher for the payment of such claim, and shall have the same force and effect as if executed by such claimant.

Deposit with collector.

Petition by claimant for funds in collector's hands.

Any person claiming to be entitled to any amount so deposited with the collector, may, within five years after such deposit, petition the court or judge for any order directing payment to the said claimant. A copy of such petition shall be served on the collector and thereafter no such amount shall be covered into the Treasury of the United States, as hereinafter directed, until so ordered by the court.

Unclaimed, covered into Treasury.

If no one claims the amount, as herein provided, or if a claim be made and disallowed and the court so directs, such amount devolves to the United States and shall be covered into the Treasury by the collector as miscellaneous receipts.

SALES, ETC., PROPERTY OF DECEDENT.

CHAPTER 29.—SALES AND CONVEYANCES OF PROPERTY OF DECEDENTS

Estate chargeable with debts.

SEC. 818. ESTATE CHARGEABLE WITH DEBTS; NO PRIORITY.—All of the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided in this code and in the Civil Code. And the said property, personal and real, may be sold in the manner prescribed in this chapter. There shall be no priority as between personal and real property for the purposes of this section.

No priority between realty and personalty.

Confirmation of sales.

SEC. 819. CONFIRMATION OF SALES.—All sales of property must be reported under oath to and confirmed by the court, before the title to the property passes.

Perishable, etc., property.

SEC. 820. PERISHABLE AND DEPRECIATING PROPERTY TO BE SOLD.—At any time after receiving letters, the executor, administrator, or special administrator may sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The executor, administrator, or special administrator is responsible for the property unless, after making a sworn return, and on a proper showing, the court shall approve the sale.

Personalty.

SEC. 821. SALE OF PERSONAL PROPERTY BY EXECUTOR OR ADMINISTRATOR.—If claims against the estate have been allowed, and a sale of property is necessary for their payment, or for the expenses of administration, or for the payment of legacies, the executor or administrator may sell all or so much of the personal property as may be necessary therefor. He may also make a sale from time to time, so long as any personal property remains in his hands, and sale thereof is necessary. If it appear for the best interests of the estate, he may, at any time after filing the inventory, in like manner sell the whole or any part of the personal property belonging to the estate, whether necessary to pay debts or not. Such sale to take effect only upon confirmation by the court.

Partnership interests, choses in action.

SEC. 822. PARTNERSHIP INTERESTS AND CHOSES IN ACTION, HOW SOLD.—Partnership interests or interests belonging to any estate by virtue of any partnership formerly existing, interest in personal property pledged, and choses in action, may be sold in the same manner as other personal property, when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the court or judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner, if in the Canal Zone and able to be present in court.

Order of sales.

SEC. 823. ORDER OF SALES.—In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of the family of the decedent, or are not specially bequeathed, must be first sold.

At public auction, or private sale.

Notice.

SEC. 824. SALE AT PUBLIC AUCTION OR PRIVATE SALE.—The sale of personal property may be made at public auction or private sale, for cash, and after public notice given for at least ten days by notices posted in three public places in the Canal Zone, or by publication in a newspaper of general circulation in the Canal Zone, or both, as the executor or administrator may determine, containing the time and place of sale, and a brief description of the property to be sold, unless the property to be sold be perishable property, in which latter case at least one day's notice by posting as aforesaid shall be given. Public sales must be made at the courthouse door, or at some other

public place, or at the residence of the decedent; but no sale shall be made of any personal property which is not present at the time of sale, unless the court shall otherwise order.

Authority to borrow on chattel mortgage.

SEC. 825. EXECUTOR AND GUARDIAN MAY BORROW ON CHATTEL MORTGAGE.—Whenever in any estate now being administered or that may hereafter be administered or in any guardianship proceeding now pending or that may hereafter be pending it shall appear to the district court or judge to be for the advantage of the estate to borrow and raise money upon a note or notes, to be secured by chattel mortgage or other lien upon the personal property of any decedent or of a minor or an incompetent person, or any part thereof, for the purpose of paying the debts of such decedent or such minor or incompetent person, the court or judge as often as occasion therefor shall arise in the administration of any estate or in the course of any guardianship may authorize, empower, and direct the executors or administrators or guardian of such minor or incompetent person to mortgage such personal property, or any part thereof, or to give other security by way of pledge or other lien upon such personal property, or any part thereof, and to execute a note or notes, to be secured by such mortgage, pledge, or lien: *Provided*, That in order to obtain such authorization, the proceedings to be taken and the effect thereof shall be as follows:

Proviso. Procedure to be followed.

Verified petition to be filed.

First. VERIFIED PETITION.—The executor or administrator of any estate, or guardian of any minor or incompetent person, or any person interested in the estates of such decedents, minors, or incompetent persons, may file a verified petition showing:

Purpose.

1. The particular purpose or purposes for which it is proposed to make the note or notes and the chattel mortgage or other lien, which shall be either to maintain the ward and his family or to maintain and educate the ward when a minor, or to pay the debts, legacies, or charges of administration, or to pay, reduce, extend, or renew some lien or mortgage already subsisting on said property or some part thereof.

Statement of facts and circumstances.

2. A statement of the facts and circumstances showing the insufficiency of the income of the estate under guardianship to maintain the ward and his family or to maintain and educate the ward when a minor and the debts, legacies, charges of administration, liens or mortgages to be paid, reduced, extended, or renewed, as the case may be.

Advantages to accrue.

3. The advantage that may accrue to the estate from raising the required money by note or notes and mortgage or other lien, or providing for the payment, reduction, extension, or renewal of the subsisting liens or mortgages, as the case may be.

Amount to be raised and description of property.

4. The amount to be raised, with a general description of the property proposed to be mortgaged; and,

Names of legatees, etc.

5. The names of the legatees and the devisees, if any, and of the heirs of the deceased, or of the minor, or of the incompetent person, as the case may be, so far as known to the petitioner.

Order to issue from court.

Second. Upon filing such petition, an order shall be made by the court or judge, requiring all persons interested in the estate to appear before the court or judge, at a time and place specified, not less than four nor more than ten weeks thereafter, then and there to show cause why the property (briefly indicating it), or some part thereof, should not be hypothecated for the amount mentioned in the petition (stating such amount), or such lesser amount as to the court or judge shall seem meet, and referring to the petition on file for further particulars.

Notice.

Third. The order to show cause may be personally served on the persons interested in the estate, at least ten days before the time appointed for hearing the petition, or may be published for four successive weeks in a newspaper of general circulation in the Canal Zone.

Hearing.

Fourth. PROCEEDINGS UPON HEARING.—Upon the hearing of the order to show cause, having first received satisfactory proof of personal service or publication of the order to show cause, the court or judge must proceed to hear the petition and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify, in the same manner, and with like effect, as in other cases; and if, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to hypothecate the whole or any portion of the property, an order must be made authorizing, empowering, and directing the executor or administrator, or the guardian of such minor or incompetent person, to make such mortgage, pledge, or other lien, and a promissory note or notes to the lender, for the amount of the loan, to be secured by said mortgage or other lien.

Order to issue, to allow loan.

Contents.

WHAT ORDER MAY PRESCRIBE.—The order may direct that a lesser amount than that named in the petition be borrowed, and may prescribe the maximum rate of interest and period of the loan, and may direct in what coin or currency it shall be paid, and require that the interest and the whole or any part of the principal be paid, from time to time, out of the whole estate or any part thereof.

Execution of note and mortgage.

Fifth. EXECUTION OF NOTE AND MORTGAGE.—After the making of the order to mortgage, the executor, administrator, or guardian of a minor or of an incompetent person shall execute and deliver a promissory note or notes for the amount and period specified in the order, and shall execute a mortgage, pledge, or other lien setting forth therein that it is made by authority of the order, and giving the date of such order. The note or notes and mortgage or other lien shall be signed by the executor, administrator, or guardian as such, and shall create no personal liability against the person so signing.

To be valid as against all parties.

Sixth. Every note or notes and mortgage or other lien so made shall be effectual to mortgage and hypothecate all the right, title, and interest which the decedent, minor, or incompetent person has in the property described therein.

Irregularity in proceedings not to impair.

No irregularity in the proceedings shall impair or invalidate the same or the note or notes and mortgage or other lien given in the pursuance thereof, and the mortgagee, his heirs and assigns, shall have and possess the same rights and remedies on the note or notes and mortgage or other lien as if it had been made by the decedent prior to his death, the minor after reaching the age of maturity, or the incompetent person when legally competent.

Provisos.
Deficiency on foreclosure.

DEFICIENCY ON FORECLOSURE.—*Provided, however*, That upon any foreclosure, if the proceeds of the encumbered property are insufficient to pay the note or notes, and mortgage, or other lien, no judgment or claim for any deficiency of such proceeds to satisfy the note or notes and mortgage, or the costs or expenses of sale, shall be had or allowed, except in cases where the note or notes and mortgage were given to pay, reduce, extend, or renew a lien or mortgage subsisting on the property, or some part thereof, at the time of the death of the decedent, and the indebtedness secured by such lien or mortgage was an allowed and approved claim against his estate, or a lien upon the interest of the minor in said property at the time it vested in him, or upon the estate of the incompetent at the time the incompetency of the incompetent person was so declared by the court:

And provided also, That in cases affecting the estate of the deceased persons, the part of the indebtedness remaining unsatisfied must be classed and paid with other demands against the estate, as provided in sections 875 to 885, with respect to mortgages and other liens subsisting at the time of death. Unsatisfied deficiency to be simple debt.

SEC. 826. WHEN EXECUTOR OR ADMINISTRATOR MAY SELL REAL PROPERTY.—When it is for the advantage, benefit, and best interests of the estate, and those interested therein, that the real estate, or some part thereof, or interest therein be sold, the executor or administrator may sell the same under such terms, conditions, and in the manner prescribed by the court. Sale of real property.

SEC. 827. POWER OF EXECUTOR OR GUARDIAN TO BORROW MONEY UPON UNSECURED NOTES.—Whenever in any estate now being administered or that may hereafter be administered, or in any guardianship proceeding now pending, or that may hereafter be pending, it shall appear to the court or judge having jurisdiction of said estate, or said minor or incompetent person, to be for the advantage, benefit, or best interest of the estate of said minor or incompetent person, to borrow money upon a note or notes, without being secured, the court or judge, as often as occasion therefor shall arise in the administration of any estate, or in the course of any guardianship, may upon petition and notice of hearing, as provided in this section, authorize, empower, and direct the executor or administrator or guardian of such minor or incompetent person, to execute a note or notes, without security. Authority to borrow on unsecured notes.

The proceeding to be taken to obtain an order to borrow said money and execute said note or notes shall be as follows: Procedure.

First. The executor, or administrator of any estate, or guardian of any minor or incompetent person must file a verified petition showing, Verified petition.

(a) The particular purpose or purposes for which it is proposed to borrow said money, and the purpose or purposes for which it is to be used. Purpose.

(b) The advantage or advantages that may accrue to said estate from borrowing said money and executing said note or notes. Advantages to accrue.

(c) The amount of money to be borrowed, the rate of interest to be paid, and the length of time said note or notes are to run. Amount, interest, etc.

Second. Upon filing such petition, the clerk of the court shall fix a day for hearing the same by the court. Hearing.

Third. The petitioner shall cause notice of the hearing to be mailed, postage prepaid, to the heirs at law of said decedent, and to the devisees and legatees resident in the Canal Zone, and to the nearest relatives of said minor or incompetent person, resident in the Canal Zone, at least ten days before the hearing, addressed to them at their respective post-office addresses, if known. Otherwise, at the place where the proceedings are pending. Notice.

Fourth. At the time and place appointed for said hearing, or at such other time and place to which the hearing may be postponed by the court, the court must proceed to hear the petition, and any objections that may be filed or presented thereto, and, if, after a full hearing, the court is satisfied that it will be for the advantage, benefit, or best interest of the estate of said decedent, or of said minor or incompetent person, to borrow said money, and execute said note or notes, without security, an order must be made, authorizing, empowering, and directing the executor, or administrator, or the guardian of such minor or incompetent person to borrow said money, and to make and execute said note or notes, without security, specifying in said order the amount that may be borrowed, the rate of interest that is to be paid, and the length of time that said note or notes are to run. Procedure on hearing.

Issue of notes, etc.

Fifth. After the making of the order to borrow said money and execute said note or notes, the executor, administrator, or guardian of the minor or incompetent person, shall execute and deliver a promissory note or notes, without security, for the amount, at the rate of interest, and for the period prescribed in said order, and said note or notes shall be signed by the executor, or administrator or guardian, as such, and shall create no personal liability against the person so signing.

To be valid as against all parties.

Sixth. Any note or notes so signed and executed, shall be effectual to create a valid obligation and debt against said estate, or said minor or incompetent person, and shall be payable out of the funds of said estate, and said note or notes shall specify that it is made by authority of such order, giving the date thereof.

POWERS AND DUTIES OF EXECUTORS, ETC., MANAGEMENT OF ESTATES.

CHAPTER 30.—POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND MANAGEMENT OF ESTATES.

Possession of estate.

SEC. 828. EXECUTORS TO TAKE POSSESSION OF THE ENTIRE ESTATE.—The executor or administrator must take into his possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator, for the purposes of administration, as provided in chapters 23 to 36 of this code.

Actions by and against executors, etc.

SEC. 829. ACTIONS MAY BE MAINTAINED BY AND AGAINST EXECUTORS AND ADMINISTRATORS.—Actions for the recovery of any property, real or personal, or for the possession thereof, or to quiet title thereto, or to determine any adverse claim thereon, and all actions founded upon contracts, may be maintained by and against executors and administrators in all cases in which the same might have been maintained by or against their respective testators or intestates.

Actions by, for waste, conversion, and trespass.

SEC. 830. MAY MAINTAIN ACTIONS FOR WASTE, CONVERSION, AND TRESPASS.—Executors and administrators may maintain actions against any person who has wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate, in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

Against, for waste or trespass of decedent.

SEC. 831. EXECUTOR AND ADMINISTRATOR MAY BE SUED FOR WASTE OR TRESPASS OF DECEDENT.—Any person or his personal representatives may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Surviving partner.

SEC. 832. SURVIVING PARTNER TO SETTLE UP BUSINESS; INTEREST THEREIN TO BE APPRAISED; ACCOUNT TO BE RENDERED.—When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue

Interest in partnership of decedent to be appraised, etc.

in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory, and be appraised as other property. The surviving partner must settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him, in right of

Account may be required.

the decedent. Upon the application of the executor or administrator, the court, or a judge thereof, may, whenever it appears necessary,

order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

Action on bond of executor, etc.

SEC. 833. ACTIONS ON BOND OF EXECUTOR OR ADMINISTRATOR MAY BE BROUGHT BY ANOTHER ADMINISTRATOR.—An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Unqualified executors not parties to actions.

SEC. 834. WHAT EXECUTORS ARE NOT PARTIES TO ACTIONS.—In actions by or against executors, it is not necessary to join those as parties to whom letters were issued, but who have not qualified.

Compounds and compromises.

SEC. 835. MAY COMPOUND.—Whenever a debtor of the decedent is unable to pay all his debts, the executor or administrator, with the approbation of the court or judge, may compound with him and give him a discharge, upon receiving a fair and just dividend of his effects. A compromise may also be authorized when it appears to be just, and for the best interest of the estate.

Recovery of property fraudulently disposed of by testator.

SEC. 836. RECOVERY OF PROPERTY FRAUDULENTLY DISPOSED OF BY TESTATOR.—When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent, in his lifetime, has conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as against creditors. the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditor all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Suit to be instituted on application of creditors.

SEC. 837. WHEN EXECUTOR TO SUE, AS PROVIDED IN PRECEDING SECTION.—No executor or administrator is bound to sue for such estate, as mentioned in section 836, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit, or give such security to the executor or administrator therefor, as the court or judge shall direct.

Disposition of estate recovered.

SEC. 838. DISPOSITION OF ESTATE RECOVERED.—All real estate so recovered must be sold for the payment of debts, in the same manner as if the decedent had died seised thereof, upon obtaining an order therefor from the court; and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator. The remainder of the proceeds, after all the debts of the decedent have been paid, must be paid to the person from whom such property was recovered.

Deposit of funds on order of court.

SEC. 839. COURT MAY ORDER FUNDS DEPOSITED.—The court is empowered to order any executor or administrator to deposit any or all funds of an estate, coming into his hands, in a bank or banks, or other depositary, to be designated by the court. The deposit shall be made in the name of the executor or administrator with a designation of his fiduciary capacity. The court may direct the executor or administrator to deposit any or all of such funds in an interest-bearing account: *Provided, however*, That nothing in this section shall be construed to relieve any executor or administrator from any duty otherwise imposed by law.

Proviso.
Executors, etc., not relieved from duties, etc., thereby.

Investment of moneys, pending settlement, by court order.

SEC. 840. INVESTMENT OF MONEYS OF ESTATE PENDING SETTLEMENT.—Pending the settlement of any estate, on the petition of any person interested therein, and upon good cause shown therefor, the court may order any money in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States.

Notice of hearing on petition.

Such order can only be made after ten days' notice of the hearing of the said petition, by notice posted in three public places in the Canal Zone, or by publication in a newspaper of general circulation therein, or both, as the court or judge shall direct.

CONVEYANCE AND TRANSFER OF PROPERTY, REAL AND PERSONAL.

CHAPTER 31.—CONVEYANCE OF REAL ESTATE AND TRANSFER OF PERSONAL PROPERTY BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES

Completion of contracts for sale.

SEC. 841. EXECUTOR OR ADMINISTRATOR TO COMPLETE CONTRACTS FOR SALE OF REAL OR PERSONAL PROPERTY.—When a person who is bound by contract in writing to convey any real estate, or to transfer any personal property, dies before making conveyance or transfer, and in all cases when such decedent, if living, might be compelled to make such conveyance or transfer, the court having jurisdiction of the probate proceedings of the estate of such decedent, may make a decree authorizing and directing the executor or administrator of such deceased person to convey or transfer such real estate or personal property to the person entitled thereto.

Procedure to enforce.

SEC. 842. PETITION FOR EXECUTOR OR ADMINISTRATOR TO MAKE CONVEYANCE OR TRANSFER AND NOTICE OF HEARING.—On the presentation of a verified petition by the executor or administrator, or by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the court or judge shall appoint a time and place for hearing the petition, and shall order notice thereof to be served on the executor or administrator personally when he is not the petitioner, and to be published at least once a week for four successive weeks before such hearing, in a newspaper of general circulation in the Canal Zone.

Contest by interested parties.

SEC. 843. INTERESTED PARTIES MAY CONTEST.—At the time and place appointed for the hearing, or at such other time to which the same may be postponed, upon satisfactory proof by affidavit or otherwise, of the due publication of the notice, the court shall proceed to hear the said petition, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine, on oath, the petitioner and all who may be produced before him for that purpose.

Decree authorizing.

SEC. 844. DECREE AUTHORIZING CONVEYANCE.—If after a full hearing upon the petition and objections and examination of the facts and circumstances of the claim, the court is satisfied that the conveyance of the real estate described in the petition to the party entitled thereto should be made, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the party entitled thereto must be made.

Execution of conveyance, etc.

SEC. 845. EXECUTION OF CONVEYANCE OR TRANSFER, AND THE RECORDING OF THE ORDER THEREFOR.—The executor or administrator must execute the conveyance or transfer according to the directions contained in the decree, which decree shall be prima facie evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance or transfer.

Rights of petitioner to enforce contract.

SEC. 846. RIGHTS OF PETITIONER TO ENFORCE THE CONTRACT.—If upon the hearing, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months after such dismissal, proceed by action to enforce a specific performance thereof.

Effect of conveyance or transfer.

SEC. 847. EFFECT OF CONVEYANCE OR TRANSFER.—Every conveyance or transfer made in pursuance of a decree as provided in this chapter, shall pass title to the property contracted for, as fully as if the contracting party himself was still living, and executed the conveyance or transfer.

Of recording copy of decree.

SEC. 848. EFFECT OF RECORDING A COPY OF THE DECREE.—A copy of the decree for a conveyance or transfer as provided in this chapter, duly certified and recorded in the office of the registrar of property, gives the person entitled to the conveyance or transfer a right to the possession of the property contracted for, and to hold the same according to the terms of the intended conveyance or transfer, in like manner as if the same had been conveyed or transferred in pursuance of the decree.

Recording decree not to supersede power of court to enforce.

SEC. 849. RECORDING OF THE DECREE DOES NOT SUPERSEDE POWER OF COURT TO ENFORCE IT.—The recording of any decree, as provided in section 848 shall not prevent the court making the decree from enforcing the same by other process.

When transferee dead.

SEC. 850. WHERE PARTY TO WHOM CONVEYANCE OR TRANSFER TO BE MADE IS DEAD.—If the person entitled to the conveyance or transfer dies before the commencement of the proceedings therefor under this chapter, or before the completion of the conveyance or transfer, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent, may, for the benefit of the person so entitled, commence such proceedings or prosecute any already commenced, and the conveyance or transfer must be so made as to vest the property in the person or persons entitled thereto, or in the executor or administrator, for their benefit.

Surrender of possession.

SEC. 851. DECREE MAY DIRECT POSSESSION TO BE SURRENDERED.—The decree provided for in this chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing a certified copy of the decree, when, by the terms of the contract, possession is to be surrendered.

CHAPTER 32.—ACCOUNTS RENDERED BY EXECUTORS AND ADMINISTRATORS, AND PAYMENT OF DEBTS

ACCOUNTS BY EXECUTORS, ETC., PAYMENT OF DEBTS.

LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

Liabilities and compensation of executors, etc.

Personal liability.

SEC. 852. WHEN EXECUTOR OR ADMINISTRATOR PERSONALLY LIABLE.—No executor or administrator is chargeable upon any special promise to answer in damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized in writing.

Executor, etc., chargeable with all estate, etc.

SEC. 853. EXECUTOR TO BE CHARGED WITH ALL ESTATE, AND SO FORTH.—Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Not to profit or lose by estate.

SEC. 854. NOT TO PROFIT OR LOSE BY ESTATE.—He shall not make profit by the increase, nor suffer loss by the decrease, or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

Uncollected debts without fault.

SEC. 855. UNCOLLECTED DEBTS WITHOUT FAULT.—No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

Allowance of expenses.

SEC. 856. EXPENSES OF EXECUTORS.—The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services such fees as provided by this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless by a written instrument, filed in the court, he renounces all claim for compensation provided for in the will.

Allowance upon commissions.

ALLOWANCE UPON COMMISSIONS.—At any time during the administration any executor or administrator, may, upon such notice to the other parties interested in the estate as the court shall by order require, apply to the court for an allowance to himself upon his commissions, and the court shall on the hearing of such application make an order allowing such executor or administrator such portion of his commissions as to the court shall seem proper, and the portion so allowed may be thereupon charged against the estate.

Allowance to attorney of fees.

ALLOWANCE TO ATTORNEY UPON FEE.—Any attorney who has rendered services to an executor or administrator may at any time during the administration, and upon such notice to the other parties interested in the estate as the court shall by order require, apply to the court for an allowance to himself, of compensation therefor, and the court shall on the hearing of such application make an order requiring the executor or administrator to pay such attorney out of the estate such compensation on account of services rendered by such atorney up to the date of such order as to the court shall seem proper, and such payment shall be forthwith made.

Purchase of claims against estate forbidden.

SEC. 857. NOT TO PURCHASE CLAIMS AGAINST THE ESTATE.—No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value he is only entitled to charge in his account the amount he actually paid.

Commissions allowed to executors and administrators.

SEC. 858. EXECUTORS AND ADMINISTRATORS; COMMISSIONS ALLOWED TO.—When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of estate accounted for by him, as follows: for the first $1,000, at the rate of 7 per cent; for the next $9,000, at the rate of 4 per cent; for the next $10,000, at the rate of 3 per cent; for the next $30,000, at the rate of 2 per cent; for the next $50,000, at the rate of 1 per cent; and for all above $100,000, at the rate of one-half of 1 per cent. If there are two or more executors the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively. The same commissions shall be allowed to administrators. In all cases, such further allowance may be made as the court may deem just and reasonable for any extraordinary service, but the total amount of such extra allowance must not exceed one-half the amount of commissions allowed by this section. Where the property of the estate is distributed in kind, and involves no labor beyond the custody and distribution of the same, the commission shall be computed on all the estate above the value of $20,000, at one-half of the rates fixed

Apportionment.

in this section. Public administrators shall, subject to the provisions of section 952, receive the same compensation and allowances as are allowed in this title to other administrators. All contracts between an executor or administrator and an heir, devisee, or legatee, for a higher compensation than that allowed by this section, shall be void. When the executor or administrator is an attorney he shall not be allowed to charge against the estate any professional fees, as such, for services rendered by himself.

Public administrators.

Attorney serving as, not allowed professional fees.

SEC. 859. ALLOWED FEES FOR ATTORNEYS; EXTRAORDINARY [1] SERVICES.—Attorneys for executors and administrators shall be allowed out of the estate as fees for conducting the ordinary probate proceedings such reasonable sum as the court may allow which shall be not in excess of such amounts as are allowed by section 858 as compensation for executors and administrators for their own services. In all cases such further allowance may be made as the court may deem just and reasonable for any extraordinary services such as sales or mortgages of real estate, contested or litigated claims against the estate, litigation in regard to the property of the estate, and such other litigation as may be necessary for the executor or administrator to prosecute or defend.

Attorneys' fees, extraordinary services.

ACCOUNTING AND SETTLEMENTS BY EXECUTORS AND ADMINISTRATORS

Accounting and settlements by executors, etc.

SEC. 860. EXECUTOR'S EXHIBIT OF MONEY RECEIVED, AND SO FORTH.—When required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims filed or presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Exhibits of money received, etc.

SEC. 861. OBJECTIONS TO ACCOUNT, WHO MAY FILE.—When an exhibit is rendered by an executor or administrator, any person interested may appear and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

Objections to account, filing of.

SEC. 862. ATTACHMENT FOR NOT OBEYING CITATION.—If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may be issued against him and such exhibit enforced, or his letters may be revoked, in the discretion of the court.

Attachment for not obeying citation.

SEC. 863. EXECUTOR'S REPORT.—Within thirty days after the expiration of the time mentioned in the notice to creditors within which claims must be filed or exhibited every executor or administrator must render a full account and report of his administration. If he fails to present his account the court or judge must compel the rendering of the account by attachments, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account must exhibit all debts which have been filed and allowed during the period embraced in the account.

Executor's report.

[1] So in original.

Account after authority revoked.

SEC. 864. EXECUTOR TO ACCOUNT AFTER HIS AUTHORITY REVOKED.—When the authority of an executor or administrator ceases, or is revoked for any reason, he may be cited to account before the court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

Revocation of authority.

SEC. 865. REVOKING AUTHORITY OF EXECUTOR, WHEN.—If the executor or administrator resides out of the Canal Zone, or absconds, or conceals himself, so that the citation can not be personally served, and neglects to render an account within thirty days after the time prescribed in this subchapter, or if he neglects to render an account within thirty days after being committed where the attachment has been executed, his letters must be revoked.

Vouchers to be produced and filed.

SEC. 866. TO PRODUCE AND FILE VOUCHERS, WHICH REMAIN IN COURT.—In rendering his account, the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason can not be produced on the settlement, the payment may be proved by the oath of any competent witness.

Petty cash expenditures.

SEC. 867. EXPENDITURES LESS THAN $20 MAY BE ALLOWED EXECUTORS WITHOUT VOUCHERS.—On the settlement of his account he may be allowed any item of expenditure not exceeding $20, for which no voucher is produced, if such item be supported by his own uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed $500 against any one estate.

Lost and destroyed vouchers.

LOST OR DESTROYED VOUCHERS.—Provided, that if it appears by the oath to the account and is proven by competent evidence to the satisfaction of the court, that a voucher for any disbursement or disbursements whatsoever has been lost or destroyed, and that it is impossible to obtain a duplicate thereof, and that such item or items were paid in good faith and for the best interests of the estate, and such item or items were legal charges against said estate, then the executor or administrator shall be allowed such item or items.

Payments of debts without affidavit, etc.
Ante, p. 1045.

PAYMENTS OF DEBTS WITHOUT AFFIDAVIT AND ALLOWANCE.—If, upon such settlement of accounts, it appears that debts against the deceased have been paid without the affidavit and allowance prescribed by statute or sections 799 and 800, and it shall be proven by competent evidence to the satisfaction of the court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is solvent, it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

Day of settlement to be appointed.

SEC. 868. DAY OF SETTLEMENT TO BE APPOINTED; CLERK MUST GIVE NOTICE THEREOF; HEARING ON SETTLEMENT.—When any account is rendered for settlement, the clerk of the court must appoint a day for the settlement thereof, and thereupon give notice thereof by causing notices to be posted in at least three public places in the Canal Zone, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account. If, upon the final hearing at the time of settlement, the court or judge should deem the notice insufficient from any cause,

Notice.

Hearing.

he may order such further notice to be given as may seem to him proper.

Notice of final settlement.

SEC. 869. WHEN SETTLEMENT IS FINAL, NOTICE MUST SO STATE.—If the account mentioned in the preceding section be for a final settlement, and a petition for the final distribution of the estate be filed with said account, the notice of settlement must state those facts, which notice must be given by posting or publication for at least ten days prior to the day of settlement. On the settlement of said account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings.

Exceptions to account.

SEC. 870. INTERESTED PARTY MAY FILE EXCEPTIONS TO ACCOUNT.—On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account, and contest the same.

Contesting of matters by heirs.

SEC. 871. ALL MATTERS MAY BE CONTESTED BY THE HEIRS; HEARING MAY BE POSTPONED.—All matters, including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs, for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts, and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees to be paid out of the estate of the decedent. Whenever an allowed claim is contested by any heir, or other person entitled to contest it, either the contestant or the claimant is entitled to a trial by jury of the issues of fact presented by the contest; and it is the duty of the court, at request of either party, to call a jury and submit to them such issues, and, after receiving their verdict, to enter an order disposing of such contest in accordance therewith.

Postponement of hearing.

Trial by jury.

Settlement of accounts conclusive.

SEC. 872. SETTLEMENT OF ACCOUNTS TO BE CONCLUSIVE, WHEN AND WHEN NOT.—The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their right to move for cause to reopen and examine the account, or to proceed by action against the executor or administrator, either individually or upon his bond, at any time before final distribution; and in any action brought by any such person, the allowance and settlement of the account is prima facie evidence of its correctness.

Saving persons under disability.

Proof of notice.

SEC. 873. PROOF OF NOTICE OF SETTLEMENT OF ACCOUNTS.—The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Deceased executor's, etc., accounts.

SEC. 874. DECEASED EXECUTOR'S OR GUARDIAN'S ACCOUNTS.—If any executor, administrator or guardian dies, his accounts may be presented by his personal representative to, and settled by, the court in which the estate of which he was executor, administrator or guardian is being administered, and, upon petition of the successor of such deceased executor, administrator or guardian, such court may compel the personal representatives of such deceased executor, administrator or guardian to render an account of the administration of their testator or intestate, and must settle such account as in other cases.

Payment of debts.

PAYMENT OF DEBTS OF ESTATE

Order.

SEC. 875. ORDER IN WHICH DEBTS MUST BE PAID.—The debts of the estate must be paid in the following order:

1. Funeral expenses;
2. The expenses of the last sickness;
3. Debts due to the United States;
4. Judgments rendered against the decedent in his lifetime, and mortgages and other liens in the order of their date;
5. All other demands against the estate.

Debts payable in particular kind of currency.

If a debt is payable in a particular kind of money or currency, it must be paid only in such money or currency. If the estate is insolvent, no greater rate of interest must be paid upon any debt, from the time of the first publication of notice to creditors, than is allowed by law on judgments.

Limitation on priority of mortgage, etc.

SEC. 876. WHERE PROPERTY INSUFFICIENT TO PAY MORTGAGE.—The preference given in section 875 to a mortgage or lien only extends to the proceeds of the property subject to the mortgage or lien. If the proceeds of such property are insufficient to pay the mortgage or lien, the part remaining unsatisfied must be classed with general demands against the estate.

If estate insufficient, dividends to be paid.

SEC. 877. ESTATE INSUFFICIENT, A DIVIDEND TO BE PAID.—If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class are fully paid.

Expenses of funeral and last sickness.

SEC. 878. FUNERAL EXPENSES AND EXPENSES OF LAST SICKNESS.—The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of administration, but he is not obliged to pay any other debt or any legacy until, as prescribed in this sub-chapter, the payment has been ordered by the court.

Payment of debts by court order.

SEC. 879. ORDER FOR PAYMENT OF DEBTS, AND DISCHARGE OF THE EXECUTOR OR ADMINISTRATOR.—Upon the settlement of the account of the executor or administrator, provided for in section 863, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there are not sufficient funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property of the estate is exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge on producing and filing the necessary vouchers and proofs showing that such payments have been made, and that he has fully complied with the decree of the court.

Discharge of executor, etc.

Disputed and contingent claims.

SEC. 880. PROVISION FOR DISPUTED AND CONTINGENT CLAIMS.—If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established, or absolute, must be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for

in this section are not to be made when the estate is insolvent, unless a pro rata distribution is ordered.

Court decree for payment of debts, executor personally liable.

SEC. 881. AFTER DECREE FOR PAYMENT OF DEBTS, EXECUTOR PERSONALLY LIABLE TO CREDITORS.—When a decree is made by the court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the court, in favor of each creditor, and the same proceeding may be had under such execution as under execution in other cases. The executor or administrator is liable therefor on his bond to each creditor.

Claims not included in decree, disposition of.

SEC. 882. CLAIMS NOT INCLUDED IN ORDER FOR PAYMENT OF DEBTS, HOW DISPOSED OF.—When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed in section 795, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

Decree for payment of legacies, extension of time.

SEC. 883. ORDER FOR PAYMENT OF LEGACIES, AND EXTENSION OF TIME.—If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

Final account.

SEC. 884. FINAL ACCOUNT, WHEN TO BE MADE.—At the time designated in section 883, or sooner, if within that time all the property of the estate has been sold, or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account, and pray a settlement of his administration.

Failure to render.

SEC. 885. NEGLECT TO RENDER FINAL ACCOUNT, HOW TREATED.—If he neglects to render his account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last-mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

CHAPTER 33.—PARTITION, DISTRIBUTION, AND FINAL SETTLEMENT OF ESTATES

PARTITION, DISTRIBUTION, FINAL SETTLEMENT OF ESTATES.

PARTIAL DISTRIBUTION PRIOR TO FINAL SETTLEMENT

Partial distribution.

Payment of legacies, petition for.

SEC. 886. PAYMENT OF LEGACIES.—At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir, devisee, legatee (or his assignee, grantee, or successor in interest) may present his petition to the court for the legacy or share of the estate to which he is entitled, or any portion thereof, to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate.

Notice.

SEC. 887. NOTICE OF APPLICATION FOR LEGACIES.—Notice of the application must be given to the executor or administrator, personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Contest.

SEC. 888. EXECUTOR, OR OTHER PERSON INTERESTED, MAY RESIST APPLICATION.—The executor or administrator, or any person interested in the estate, may appear at the time named and resist the application.

Granting of prayer of applicant.

SEC. 889. PRAYER OF APPLICANT GRANTED.—If, at the hearing, it appears that the estate is but little indebted, and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

Decree granting, to require.

Bond.

1. BOND.—Each heir, legatee, devisee (or his assignee, grantee, or successor in interest) obtaining such order, before receiving his share or any portion thereof, to execute and deliver to the executor or administrator, a bond, in such sum as may be designated by the court or judge, with sureties to be approved by the judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or portion of the estate to which he is entitled. Where the time for filing or presenting claims has expired, and all claims that have been allowed, have been paid, or are secured by mortgage upon real estate sufficient to pay them, and the court is satisfied that no injury can result to the estate, the court may dispense with the bond;

Delivery of property.

2. DELIVERY OF PROPERTY.—The executor or administrator to deliver to the heir, legatee, devisee (or his assignee, grantee, or successor in interest), the whole portion of the estate to which he may be entitled, or only a part thereof designating it.

Partition.

If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings must be paid by the applicant, or if there are more than one, must be apportioned equally among them.

Petition and order for payment of bond.

SEC. 890. ORDER FOR PAYMENT OF BOND, AND SUIT THEREON.—When any bond has been executed and delivered, under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment, and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Partial distribution, petition for.

SEC. 891. PARTIAL DISTRIBUTION OF ESTATES OF DECEASED PERSONS.—Where the time for filing or presenting claims has expired, and all claims that have been allowed have been paid, or are secured by a mortgage upon real estate sufficient to pay them, and the estate is not in a condition to be finally closed and distributed, the executor or administrator, or coexecutor or coadministrator, may present his petition to the court for ratable payment of the legacies, or ratable distribution of the estate to all the heirs, legatees, devisees, or their assignees, grantees or successors in interest. Notice of such application must be given to all persons interested in the estate, in the

Notice.

same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Any person interested in the estate may appear at the time named and resist the application. Contest.

ORDER GRANTED WHEN.—If, at the hearing, it appears that the allegations of the petition of said executor, administrator, coexecutor, or coadministrator, are true, and the court is satisfied that no injury can result to the estate by granting the petition, the court must make an order directing the executor or executors, administrator or administrators, as the case may be, to deliver to the heirs, legatees, devisees, or to their assigns, grantees, or successors in interest, the whole portion of the estate to which they may be entitled or only a part thereof, designating it. Granting of decree.

If, in the execution of the order, a partition is necessary between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of the proceedings under this section must be paid by the estate, excepting that in case a partition is necessary, the costs of such partition must be apportioned amongst the parties interested in such partition. Partition.

DISTRIBUTION ON FINAL SETTLEMENT

Distribution on final settlement.

SEC. 892. PROCEEDINGS IN THE NATURE OF AN ACTION TO DETERMINE HEIRSHIP; PETITION.—In all estates now being administered, or that may hereafter be administered, any person claiming to be heir to the deceased, or entitled to distribution in whole or in any part of such estate, may, at any time prior to the decree of final distribution, file a petition in the matter of such estate, praying the court to ascertain and declare the rights of all persons to said estate and all interests therein, and to whom distribution thereof should be made. Petition to establish rights of parties.

NOTICE TO PERSONS INTERESTED.—Upon the filing of such petition, the court shall make an order directing service of notice to all persons interested in said estate to appear and show cause, on a day to be therein named, not less than sixty days nor over four months from the date of the making of such order, in which notice shall be set forth the name of the deceased, the name of the executor or administrator of said estate, the names of all persons who may have appeared claiming any interest in said estate in the course of the administration of the same, up to the time of the making of said order, and such other persons as the court may direct, and also a description of the real estate whereof said deceased died seised or possessed, so far as known, described with certainty to a common intent, and requiring all said persons, and all persons named or not named having or claiming any interest in the estate of said deceased, at the time and place in said order specified, to appear and exhibit, as hereinafter provided, their respective claims of heirship, ownership, or interest in said estate, to said court, which notice shall be served in the same manner as a summons in a civil action, upon proof of which service, by affidavit or otherwise, to the satisfaction of the court, the court shall thereupon acquire jurisdiction to ascertain and determine the heirship, ownership, and interest of all parties in and to the property of said deceased, and such determination shall be final and conclusive in the administration of said estate, and the title and ownership of said property. The court shall enter an order or decree establishing proof of the service of such notice. Notice.

FILING OF APPEARANCE—DEFAULT.—All persons appearing within the time limited as aforesaid shall file their written appearance in person or through their authorized attorney, such attorney filing at the same time written evidence of his authority to so appear, entry of which appearance shall be made in the minutes of the court and in Appearance, default.

the register of proceedings of said estate. And the court shall, after the expiration of the time limited for appearing as aforesaid, enter an order adjudging the default of all persons for not appearing as aforesaid who shall not have appeared as aforesaid.

Complaint by interested persons; filing and service of answer to.

COMPLAINT BY INTERESTED PERSONS; FILING AND SERVICE OF ANSWER TO.—At any time within twenty days after the date of the order or decree of the court establishing proof of the service of such notice, any of such persons so appearing may file his complaint in the matter of the estate, setting forth the facts constituting his claim of heirship, ownership, or interest in said estate, with such reasonable particularity as the court may require, and serve a copy of the same upon each of the parties or attorneys who shall have entered their written appearance as aforesaid, if such parties or such attorneys reside within the Canal Zone; and in case any of them do not reside within the Canal Zone, then service of such copy of said complaint shall be made upon the clerk of said court for them, and the clerk shall forthwith mail the same to the address of such party or attorney as may have left with said clerk his post-office address.

Proceedings after issues joined.

PROCEEDINGS AFTER ISSUES JOINED.—Such parties are allowed twenty days after the service of the complaint, as aforesaid, within which to plead thereto, and thereafter such proceedings shall be had upon such complaint as in this code provided in case of an ordinary civil action; and the issues of law and of fact arising in the proceeding shall be disposed of in like manner as issues of law and fact are herein provided to be disposed of in civil actions; and the provisions of this code contained regulating the mode of procedure for the trial of civil actions shall be applicable thereto.

Plaintiff and defendant.

PLAINTIFFS AND DEFENDANTS IN PROCEEDINGS.—The party filing the petition as aforesaid, if he file a complaint, and if not, the party first filing such complaint, shall, in all subsequent proceedings, be treated as the plaintiff therein, and all other parties so appearing shall be treated as the defendants in said proceedings, and all such defendants shall set forth in their respective answers the facts constituting their claim of heirship, ownership, or interest in said estate, with such particularity as the court may require, and serve a copy thereof on the plaintiff.

Evidence.

Evidence in support of all issues may be taken orally or by deposition, in the same manner as provided in civil actions. Notice of the taking of such depositions shall be served only upon the parties, or the attorneys of the parties, so appearing in said proceeding.

Decree, what to determine; conclusiveness.

DECREE, WHAT TO DETERMINE; CONCLUSIVENESS OF.—The court shall enter a default of all persons failing to appear, or plead, or prosecute, or defend their rights as aforesaid; and upon the trial of the issues arising upon the pleadings in such proceedings, the court shall determine the heirship to said deceased, the ownership of his estate, and the interest of each respective claimant thereto or therein, and persons entitled to distribution thereof, and the final determination of the court thereupon shall be final and conclusive in the distribution of said estate, and in regard to the title to all the property of the estate of said deceased.

Distribution of cost.

The cost of the proceedings under this section shall be apportioned in the discretion of the court.

Attorney for minor.

ATTORNEY FOR MINORS.—In any proceeding under this section, the court may appoint an attorney for any minor mentioned in said proceedings not having a guardian.

Determination of heirship at final distribution.

DETERMINATION OF HEIRSHIP AT FINAL DISTRIBUTION.—Nothing in this section contained shall be construed to exclude the right upon final distribution of any estate to contest the question of heirship,

title, or interest in the estate so distributed, where the same shall not have been determined under the provisions of this section; but where such questions shall have been litigated, under the provisions of this section, the determination thereof as herein provided shall be conclusive in the distribution of said estate.

Final distribution of estate.

SEC. 893. FINAL DISTRIBUTION OF ESTATE.—Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, devisee (or his assignee, grantee, or successor in interest), the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, or the issue of a deceased child, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed as provided in the Civil Code. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final account, must be reported and filed at the time of making such distribution; and a settlement thereof, together with an estimate of the expenses of closing the estate must be made by the court, and included in the order or decree, or the court or judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

Supplemental accounting by executor.

Contents and conclusiveness of decree.

SEC. 894. WHAT THE DECREE MUST CONTAIN, AND IS FINAL.—In the order or decree, the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees, or devisees.

Distribution of nonresident decedent's estate.

SEC. 895. DISTRIBUTION WHEN DECEDENT WAS NOT A RESIDENT OF THE CANAL ZONE.—Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a nonresident of the Canal Zone, leaving a will which has been duly proved or allowed in the state of his residence, and an authenticated copy thereof has been admitted to probate in the Canal Zone, or if the decedent died intestate, and an administrator has been duly appointed and qualified in the state of his residence, and it is necessary, in order that the estate, or any part thereof, may be distributed according to the will, or if the court is satisfied that it is for the best interests of the estate, that the estate in the Canal Zone should be delivered to the executor or administrator in the state or place of the decedent's residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed or administrator, in the Canal Zone, in relation to all property embraced in such order, which binds and concludes all parties in interest. Sales of real estate, ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the court.

Petition for final distribution.

SEC. 896.—PETITION FOR FINAL DISTRIBUTION; NOTICE OF HEARING; CONTEST; PARTITION.—The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. When such petition is filed the clerk of the court must set the petition for hearing by the court, and give notice thereof by

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causing a notice to be posted at the courthouse where the court is held, setting forth the name of the estate, the executor or administrator, and the time appointed for the hearing of the petition. If, upon the hearing of the petition, the court or judge deems the notice insufficient from any cause, he may order such further notice to be given as may seem to him proper. At the time fixed for the hearing, or to which the hearing may be postponed, any person interested in the estate may appear and contest the petition by filing written objections thereto. If the partition is applied for, as provided in this chapter, the decree of distribution does not divest the court of jurisdiction to order partition, unless the estate is finally closed.

Contest.

Partition.

Continuation of administration.

SEC. 897. CONTINUATION OF ADMINISTRATION; PETITION FOR.—In all cases where a decedent shall have left a will, in and by the terms of which the testator shall have limited the time for administration upon an estate left by him, and the executor, and all of the legatees or devisees named in the will, shall file and present to the court a petition, in writing, representing that it will be for the best interests of the estate, and of the beneficiaries under the will, to have the administration upon the estate continued for a longer period of time than that designated in such will, and that it would be injurious to the estate, and to such beneficiaries, to have the administration brought to a close at the date therefor designated in the will.

Petition for.

Notice and hearing.

HEARING OF PETITION AND NOTICE OF.—The court shall then set a day for the hearing of said petition; and notice thereof shall be served on all persons interested in the estate, in the same manner that summons in civil actions is served. Upon the day set for such hearing (or upon some other day to which the hearing may have been continued), the court shall proceed to hear proofs touching the representations made in such petition—and any person interested in the estate may also present counter-proofs in opposition to said application.

Decree.

DECREEING CONTINUANCE OF ADMINISTRATION.—And if, upon such hearing, it be made to appear to the court that the representations made by the petitioners in their said petition contained be true, the court may then, by its order and decree in that behalf, decree and direct that the administration upon the estate continue for and during such further period of time as in its judgment will best subserve the interests of the estate and of the beneficiaries under said will.

Proviso.
Petition to close administration.

PETITION TO HAVE ADMINISTRATION CLOSED.—*Provided, however,* That if, at any time during the period for which the administration upon the estate shall have been thus continued, the executor, or any one or more of the legatees or devisees, shall present to the court his or their petition, representing that it has become necessary for the best interests of the estate, and of the beneficiaries under the will, to have the administration upon the estate closed, the court shall then set a day for the hearing of said last-named petition; and notice thereof shall be given in the same manner, and the same proceedings be had thereupon, as shall have been given for and had upon the hearing of the petition asking for the continuation of such administration. And if, upon such hearing, it shall be made to appear to the court that the representations made by such petitioners or petitioner (as the case may be) are true, the court shall then, by its order and decree in that behalf, decree and direct that the administration upon the estate be closed as soon thereafter as, under the circumstances shall be practicable.

Notice and hearing.

Decree.

Distribution after death of heir, etc.

SEC. 898. DISTRIBUTION AFTER DEATH OF HEIR, ETC.—If any heir, legatee, or devisee of an estate shall die before the distribution to him of any part thereof, then the property to which he might be

entitled, if living, shall be and become a part of his estate and the same may be distributed to the representative of his estate for the purpose of administration therein, with the same effect as if distributed to him if living.

DISTRIBUTION AND PARTITION

Distribution and partition.

Estates in common.

SEC. 899. ESTATE IN COMMON; COMMISSIONERS.—When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the court, who must be duly sworn to the faithful discharge of their duties, a certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

By commissioners.

Petition for partition.

SEC. 900. PARTITION AND NOTICE THEREOF, AND THE TIME OF FILING PETITION.—Such partition may be ordered and had in the district court on the petition of any person interested. But before commissioners are appointed, or partition ordered by the court as directed in this chapter, notice thereof must be given to all persons interested who reside in the Canal Zone, or to their guardians, and to the agents, attorneys, or guardians, if any in the Canal Zone, of such as reside out of the Canal Zone, either personally or by public notice, as the court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given at any time before the order or decree of distribution, but the commissioners must not be appointed until the order or decree is made distributing the estate.

Notice.

Allowable, although some heirs, etc., have parted with interest.

SEC. 901. PARTITION MAY BE MADE, ALTHOUGH SOME OF THE HEIRS, AND SO FORTH, HAVE PARTED WITH THEIR INTEREST.—Partition or distribution of the estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Shares to be set out by metes and bounds.

SEC. 902. SHARES TO BE SET OUT BY METES AND BOUNDS.—When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right, by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

When estate can not be partitioned equitably.

SEC. 903. WHOLE ESTATE MAY BE ASSIGNED TO ONE, IN CERTAIN CASES.—When the real estate can not be divided without prejudice or inconvenience to the owners, the court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction, or in case of the minority of such party, then to the satisfaction of his guardian; and the true value of the estate must be ascertained and reported by the commissioners. When the commissioners appointed

Owelty.

to make partition are of the opinion that the real estate can not be divided without prejudice or inconvenience to the owners, they must so report to the court and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the commissioners, and on making or securing the payment as before provided, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete, and the title to the whole of such real estate vests in the person to whom the same is so assigned.

Report by commissioners.

Payments for equality of partition.

SEC. 904. PAYMENTS FOR EQUALITY OF PARTITION, BY WHOM AND HOW.—When any tract of land or tenement is of greater value than any one's share in the estate to be divided, and can not be divided without injury to the same, it may be set off by the commissioners appointed to make partition to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but such partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

Sale of estate.

SEC. 905. ESTATE MAY BE SOLD.—When it appears to the court, from the commissioners' report, that it can not otherwise be fairly divided and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported, and confirmed in the same manner and under the same requirements provided in chapter 29 of this code.

Ante, p. 1050.

Notice before partition.

SEC. 906. TO GIVE NOTICE TO ALL PERSONS AND GUARDIANS BEFORE PARTITION; DUTIES OF COMMISSIONERS.—Before any partition is made or any estate divided, as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before him.

Report of commissioners.

Court may set aside report.

SEC. 907. TO MAKE REPORT; SETTING ASIDE REPORT.—The commissioners must report their proceedings, and the partition agreed upon by them, to the court, in writing, and the court may, for sufficient reasons, set aside the report and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed a certified copy of the judgment, or decree of partition made thereon, attested by the clerk under the seal of the court, must be recorded in the office of the registrar of property.

When partition commissioners not necessary.

SEC. 908. WHEN COMMISSIONERS TO MAKE PARTITION ARE NOT NECESSARY.—When the court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

Advancements to heirs.

SEC. 909. ADVANCEMENTS MADE TO HEIRS.—All questions as to advancements made, or alleged to have been made, by the decedent to his heirs, may be heard and determined by the court, and must be specified in the decree assigning and distributing the estate; and the final judgment or decree of the court is binding on all parties interested in the estate.

DISTRIBUTION TO PERSON WHOSE ADDRESS IS UNKNOWN, AND SO FORTH

Distribution to person whose address unknown, etc.

Unfound distributee.

SEC. 910. DISTRIBUTION OF ESTATE TO PERSON WHOSE ADDRESS IS UNKNOWN, AND SO FORTH.—When any estate is distributed by the judgment or decree of the court or judge, as provided in this chapter, to a distributee who can not be found and his or her place of residence is unknown or to a distributee who refuses to accept the same or to give a proper voucher therefor, or to a minor or incompetent person, who has no lawful guardian to receive the same, or person authorized to receipt therefor, the portion of said estate consisting of money shall be paid to and deposited with the collector of the Panama Canal, who shall give a receipt for the same, and shall be liable on his official bond therefor; and said receipt shall be deemed and received by the court or judge as a voucher in favor of said executor or administrator, with the same force and effect as if executed by the distributee thereof. And this section shall be applicable to any and all estates now pending in which a final decree of discharge has not been granted.

Distributee who refuses to accept.

Minors, etc.

Money to be deposited with collector of Panama Canal.

Any person claiming to be entitled to any amount so deposited with the collector, may, within five years after such deposit, petition the court or judge for an order directing payment to the said distributee. A copy of such petition shall be served on the collector and thereafter no such amount shall be covered into the Treasury of the United States, as hereinafter directed, until so ordered by the court.

Claimants to funds in hands of collector, recovery.

If no one claims the amount, as herein provided, or if a claim be made and disallowed and the court so directs, such amount devolves to the United States and shall be covered into the Treasury by the collector as miscellaneous receipts.

Unclaimed funds covered into Treasury.

AGENTS FOR ABSENT INTERESTED PARTIES; DISCHARGE OF EXECUTOR OR ADMINISTRATOR

Agents for absent parties; discharge of executor, etc.

Agent to possess property for absentees.

SEC. 911. COURT MAY APPOINT AGENT TO TAKE POSSESSION FOR ABSENTEES.—When any estate is assigned or distributed, by a judgment or decree of the court, as provided in this chapter, to any person residing out of, and having no agent in the Canal Zone, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose and authorize him to take charge of such estate, as well as to act for such absent person in the distribution.

Bond and compensation.

SEC. 912. AGENT TO GIVE BOND, AND HIS COMPENSATION.—The agent must execute a bond to the Government of the Canal Zone, to be approved by the court or judge, conditioned that he shall faithfully manage and account for the estate. The court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Unclaimed estate, disposal.

SEC. 913. UNCLAIMED ESTATE, HOW DISPOSED OF.—When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court, and the proceeds after deducting the expenses of the sale, allowed by the court, must be paid to the collector of the Panama Canal. When the payment is made, the agent must take from the collector a receipt, which he must file in the court. Where any agent has money in his hands as such agent, and it appears to the court upon the settlement of his account as such agent that the balance remaining in his hands should be paid to the collector, the court may direct such payment and

Proceeds paid to collector of Panama Canal.

upon such agent filing the proper receipt showing such payment, the court shall enter an order discharging such agent and his sureties from all liability therefor. All such funds shall be held and disposed of by the collector in the manner provided in section 910.

Real and personal property of absentee; disposal of.

SEC. 914. WHEN REAL AND PERSONAL PROPERTY OF ABSENTEE TO BE SOLD.—The agent must render the court appointing him, annually, an account, showing:

1. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what.

2. The income derived therefrom.

3. Expenses incurred in the care, protection, and management thereof, and whether paid or unpaid. When filed the court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited with the collector.

Agent's liability on bond.

SEC. 915. LIABILITY OF AGENT ON HIS BOND.—The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

Certificate to claimant.

SEC. 916. CERTIFICATE TO CLAIMANT.—When any person appears and claims the money paid to the collector of the Panama Canal, the court making the distribution must inquire into such claim, and being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the auditor must draw his warrant on the collector for the amount.

Final settlement, decree, and discharge.

SEC. 917. FINAL SETTLEMENT, DECREE, AND DISCHARGE.—When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

Discovery of property.

SEC. 918. DISCOVERY OF PROPERTY.—The final settlement of an estate, as in this chapter provided, shall not prevent a subsequent issue of letters testamentary or of administration, or of administration with the will annexed, if other property of the estate be discovered, or if it become necessary or proper for any cause that letters should be again issued.

Accounts of trustees; distribution.

ACCOUNTS OF TRUSTEES; DISTRIBUTION

Jurisdiction of district court to continue.

SEC. 919. DISTRICT COURT NOT TO LOSE JURISDICTION BY FINAL DISTRIBUTION.—Where any trust has been created by or under any will to continue after distribution, the district court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trusts.

Accounting by trustee.

ACCOUNTING BY TRUSTEE.—And any trustee created by any will, or appointed to execute any trust created by any will, may, from time to time, pending the execution of his trust, or may, at the termination thereof, render and pray for the settlement of his accounts as such trustee, before the court in which the will was probated, and in the manner provided for the settlement of the accounts of executors and administrators. The trustee, or, in case of his death, his

Petition for settlement.

legal representatives, shall, for that purpose, present to the court his verified petition, setting forth his accounts in detail, with a report showing condition of trust estate, together with a verified statement of said trustee, giving the names and post-office addresses, if known, of the cestuis que trust, and upon the filing thereof, the clerk shall fix a day for the hearing, and give notice thereof of not less than ten days, by causing notices to be posted in at least three public places in the Canal Zone, setting forth the name of the trust estate, the trustee, and the day appointed for the settlement of the account. The court or judge may order such further notice to be given as may be proper. Such trustee may, in the discretion of the court, upon application of any beneficiary of the trust, or the guardian of such beneficiary, be ordered to appear and render his account, after being cited by service of citation, as provided for the service of summons in civil cases, and such application shall not be denied where no account has been rendered to the court within six months prior to such application. Upon the filing of the account so ordered, the same proceedings for the hearing and settlement thereof shall be had as hereinabove provided.

Notice and hearing.

Compensation.

SEC. 920. COMPENSATION OF TRUSTEES.—On all such accountings the court shall allow the trustee or trustees the proper expenses and such compensation for services as the court may adjudge to be just and reasonable, and shall apportion such compensation among the trustees according to the services rendered by them respectively, and may in its discretion fix a yearly compensation for the trustee or trustees to continue as long as the court may judge proper.

Refusal to act as trustee.

SEC. 921. TRUSTEE MAY DECLINE TO ACT.—Any person named or designated as a trustee in any will which has been or shall hereafter be admitted to probate in the Canal Zone may, at any time before final distribution, decline to act as such trustee, and an order of court shall thereupon be made accepting such resignation; but the declination of any such person who has qualified as trustee shall not be accepted by the court, unless the same shall be in writing and filed in the matter of the estate in the court in which the administration is pending, and such notice shall be given thereof as is required upon a petition praying for letters of administration.

Filling vacancy.

APPOINTMENT TO VACANCY.—The court in which the administration is pending shall have power at any time before final distribution to appoint some fit and proper person to fill any vacancy in the office of trustee under the will, whether resulting from such declination, removal, or otherwise; provided, it shall be required by law or necessary to carry out the trust created by the will, that such vacancy shall be filled; and every person so appointed shall, before acting as trustee, give a bond such as is required by section 731, of a person to whom letters of administration are directed to issue. Such appointment may be made by the judge upon the written application of any person interested in the trust filed in the probate proceedings, and shall only be made after notice to all parties interested in the trust, given in the same manner as notice is required to be given of the hearing upon the petition for the probate of a will. In each of the preceding cases the court may order such further notice as shall seem necessary.

Bond.
Ante, p. 1034.

Preservation of estate by court.

In accepting a declination under the provisions of this section, the court may make and enforce any order which may be necessary for the preservation of the estate.

Jurisdiction.

SEC. 922. JURISDICTION.—The provisions of section 921 shall apply in all cases where a final decree of distribution has not been made; but the jurisdiction given by said section shall not exclude, in cases

to which it applies, the jurisdiction now possessed by the district court.

ORDERS, DECREES, ETC., PROBATE MATTERS.

CHAPTER 34.—ORDERS, DECREES, PROCESS, MINUTES, RECORDS, AND TRIALS IN PROBATE PROCEEDINGS

Orders and decrees.

SEC. 923. ORDERS AND DECREES IN PROBATE PROCEEDINGS.—Orders and decrees made by the court or judge, in probate proceedings, need not recite the existence of facts, or the performance of acts, upon which the jurisdiction of the court or judge may depend, but it shall only be necessary that they contain the matters ordered, or adjudged, except as otherwise provided in chapters 23 to 36 of this code. All orders and decrees of the court or judge must be entered at length in the minute book of the court or must be signed by the judge and filed; but decrees of distribution must always be so entered at length.

Ante, pp. 1022–1078.

Publication.

SEC. 924. HOW OFTEN PUBLICATION TO BE MADE.—When any publication is ordered, such publication must be made daily, or otherwise as often during the prescribed period as the paper is regularly issued, unless otherwise provided in chapters 23 to 36 of this code. The court, or judge may, however, order a less number of publications during the period.

Ante, pp. 1022–1078.

Citation, how directed; contents.

SEC. 925. CITATION, HOW DIRECTED, AND WHAT TO CONTAIN.—Citations must be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, and must contain:

1. The title of the proceeding;
2. A brief statement of the nature of the proceeding;
3. A direction that the person cited appear at a time and place specified.

Issue of.

SEC. 926. CITATION, HOW ISSUED.—The citation may be issued by the clerk upon the application of any party, without an order of the judge, except in cases in which such order is by the provisions of chapters 23 to 36 of this code expressly required.

Service of.

SEC. 927. CITATION, HOW SERVED.—The citation must be served in the same manner as a summons in a civil action.

Personal notice by.

SEC. 928. PERSONAL NOTICE GIVEN BY CITATION.—When personal notice is required, and no mode of giving it is prescribed in chapters 23 to 36 of this code, it must be given by citation.

Service five days before return.

SEC. 929. CITATION TO BE SERVED FIVE DAYS BEFORE RETURN.—When no other time is specially prescribed in chapters 23 to 36, citations must be served at least five days before the return-day thereof.

Rules of practice.
Ante, pp. 1022–1078.

SEC. 930. RULES OF PRACTICE GENERALLY.—Except as otherwise provided in chapters 23 to 36, the provisions of chapters 4 to 16 of this code are applicable to and constitute the rules of practice in the proceedings mentioned in said chapters 23 to 36.

New trials.
Ante, pp. 916–998.

SEC. 931. NEW TRIALS IN PROBATE PROCEEDINGS.—The provisions of chapters 4 to 16 of this code, relative to new trials, except in so far as they are inconsistent with the provisions of chapters 23 to 36 of this code, apply to the proceedings mentioned in said chapters 23 to 36; provided, that hereafter a motion for a new trial in probate proceedings can be made only in cases of contests of wills, either before or after probate, in proceedings under section 892 and in those cases where the issues of fact, of which a new trial is sought, were tried by a jury or were of such character as to entitle the parties to have them tried by a jury whether or not they were so tried.

Issues joined, trial and disposition of.
Ante, p. 1025.

SEC. 932. ISSUES JOINED IN PROBATE PROCEEDINGS, HOW TRIED AND DISPOSED OF.—All issues of fact joined in probate proceedings must be tried in conformity with the requirements of sections 672 to 678, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein, on the issue

joined, as well as for costs, may be entered and enforced by execution or otherwise by the court as in civil actions.

Trial by court; framing of issues for jury.

SEC. 933. COURT MUST TRY ISSUES JOINED WHEN NO JURY IS DEMANDED; COURT MUST SETTLE AND FRAME ISSUES WHEN JURY CALLED.—If no jury is demanded, the court must try the issues joined, and sign and file its decision in writing, as provided in sections 304 and 305. If, on written demand, a jury is called by either party, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice to the opposite party, must settle and frame the issues to be tried, and submit the same, together with the evidence of each pary[1], to the jury, on which they must render a verdict. Either party may move for a new trial, upon the same grounds and errors, and in like manner, as provided in this code for civil actions.

Motion for new trial.

Costs.

SEC. 934. COSTS, BY WHOM PAID IN CERTAIN CASES.—When it is not otherwise prescribed in chapters 23 to 36, the district court, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the district court.

Removal of executor, etc., for contempt.

SEC. 935. EXECUTOR, AND SO FORTH, TO BE REMOVED WHEN COMMITTED FOR CONTEMPT, AND ANOTHER APPOINTED.—Whenever an executor, administrator, or guardian is committed for contempt in disobeying any lawful order of the court or judge, and has remained in custody for thirty days without obeying such order, or purging himself otherwise of the contempt, the court may, by order reciting the facts, and without further showing or notice revoke his letters and appoint some other person entitled thereto executor, administrator, or guardian in his stead.

Appointment of other.

Service upon guardian, etc.

SEC. 936. SERVICE OF PROCESS, AND SO FORTH, UPON GUARDIAN.—Whenever an infant, insane, or incompetent person has a guardian of his estate residing in the Canal Zone, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person in which the ward is interested, is equivalent to service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice, or order to show cause which an adult or a person of sound mind might do.

Establishment of identity of heirs.

SEC. 937. ESTABLISHMENT OF IDENTITY OF HEIRS.—In every case where title to real or personal property, or any interest therein, shall have vested or may hereafter become vested, other than by the laws of succession, in the heirs, heirs of the body, issue, or children of any person, without other description or means of identification of the persons embraced in such description, any person interested in such property as such heir, heir of the body, issue, or child, or the successor in interest of any such heir, heir of the body, issue, or child, or the legal representatives of any of such persons or of their said successors in interest, may file a verified petition in the district court in and for the division wherein said property or any part thereof is situate, setting forth briefly the deraignment of title of petitioner, a description of the property affected, and the names, ages, and residences, if known, of the heirs, heirs of the body, issue, or children whose identity is sought to be determined (or if any of the same is dead or if the residence of any of the same is unknown, such facts shall be stated) and a request that a decree be entered in said court determining and establishing the identity of the persons embraced in such general description.

[1] So in original.

Notice for hearing on identity petition.

Notice of the time and place for the hearing of said petition must be given by the clerk by posting notices thereof in three or more public places in the Canal Zone at least ten days prior to the date fixed by the clerk for said hearing.

Contest.

WHO MAY CONTEST PETITION.—At any time before the date fixed for such hearing any person interested in said property may answer said petition and deny any of the matters contained therein.

Hearing and decree.

HEARING AND DECREE.—At the time fixed for such hearing or such time thereafter as may be fixed by the court, the court must hear the proofs offered by the petitioner, and of any person answering the same and must make a decree conformable to the proofs. Such decree shall have the same force and effect as decrees entered in accordance with the provisions of chapters 23 to 36 of this code.

PUBLIC ADMINISTRATOR.

CHAPTER 35.—PUBLIC ADMINISTRATOR

CROSS REFERENCE

Post, p. 1083.

Public administrator as guardian, see section 975.

Appointment.

SEC. 938. PUBLIC ADMINISTRATOR; APPOINTMENT.—There shall be in the Canal Zone a public administrator appointed by the Governor of the Panama Canal.

Estates administered by.

SEC. 939. WHAT ESTATES TO BE ADMINISTERED BY PUBLIC ADMINISTRATOR.—The public administrator must take charge of the estates of persons dying within the Canal Zone, or who, dying elsewhere, leave estates in the Canal Zone, as follows:

1. Of the estate of decedents for which no administrators or executors are appointed, and which, in consequence thereof, may be wasted, uncared for, or lost;

2. Of the estate of decedents who have no known heirs;

3. Of the estates ordered into his hands by the court; and,

4. Of the estates upon which letters of administration or letters testamentary have been issued to him by the court.

Estates less than $150.

SEC. 940. ESTATES LESS THAN $150.—Whenever the public administrator shall file with the clerk of the district court a statement that the value of any estate, of which he has taken charge, is less than $150, there shall be no regular administration on such estate unless additional estate be found or discovered; and the public administrator may pay out such funds to the creditors, heirs, or other persons legally entitled thereto.

Burial expenses.

SEC. 941. BURIAL EXPENSES OF DECEASED PERSONS.—Whenever the public administrator takes possession of the estate of a deceased person, as provided in section 939, and the method of the defrayal of the expense of the burial of said deceased is not otherwise provided for by law or by the rules, agreement, or death benefits of any order or lodge to which the deceased may at the time of his death belong, or with which he may have been affiliated, the public administrator may, in order to defray the proper expenses of the burial of the body of the deceased and the expenses of the last illness, apply to the judge of the district court for an order permitting the public administrator to summarily sell any personal property belonging to the deceased, and to withdraw any money that the deceased may have on deposit with any bank, and to collect any indebtedness or claim that may be owing to or due the deceased.

Petition to sell property, etc., to defray.

Notice unnecessary; no fee chargeable.

No notice of the application need be given and no fee shall be charged by the clerk of the court or the public administrator for the filing of said application, or for any duty or service of the clerk or public administrator or his attorney connected therewith.

Use of funds obtained.

Upon the sale of the personal property of the deceased, or the collection of any money, claim or indebtedness by the public administrator under said order the public administrator shall use the same for the expenses of the burial of the deceased, and the expenses of the last illness.

Statement and vouchers to be filed.

The public administrator shall file with the clerk of the court a statement showing the property of the deceased that came into his hands and the disposition of the property of the deceased, and shall file with the clerk vouchers showing what disposition was made of the said property or of the proceeds thereof.

Payment of salary or claims.

SEC. 942. PAYMENT OF SALARY OR CLAIMS.—If a deceased or insane person shall have to his credit with The Panama Canal or the Panama Railroad Company, any sum as salary or other acknowledged claim, the amount so due shall be paid to the public administrator upon demand and be by him administered as a part of said person's estate: *Provided*, That if there should be other regular administration upon such person's estate in a court in the Canal Zone or in any State in the United States, then the sum due shall be paid to such other executor, administrator, or guardian upon presentation of duly authenticated copies of the order or decree appointing such executor, administrator, or guardian: *And provided further*, That in case the amount so due in salary or wages from The Panama Canal or Panama Railroad Company does not exceed $100 and it is shown that there is to be no administration of the deceased employee's estate either by the public administrator or otherwise, then payment may be made to the person or persons who under the laws of the Canal Zone would be entitled to receive the same, if administration were had, under such regulations as may be prescribed by the Governor of the Panama Canal.

Provisos.
When other regular administration.

When sum due not in excess of $100.

Estates of alien employees.

SEC. 943. DISPOSITION OF ESTATES OF ALIEN EMPLOYEES.—If a deceased intestate employee of The Panama Canal or the Panama Railroad Company, or member of his family, whose estate is being administered by the public administrator, leaves no heirs in the Canal Zone or the Republic of Panama entitled to receive such estate, the proceeds and residue thereof may be delivered to the diplomatic or consular representative, accredited to the Canal Zone or the Republic of Panama, of the country of which the deceased was a citizen or subject for delivery by such representative to the heirs of the deceased: *Provided*, That if the deceased was a citizen of the Republic of Panama, the residue of his estate may be delivered to his heirs in the Republic of Panama or to the authorities of the said Republic lawfully designated to receive the same.

Proviso.
When citizen of Republic of Panama.

When public administrator takes charge.

SEC. 944. WHEN PUBLIC ADMINISTRATOR TAKES CHARGE; HIS BOND AND OATH.—Whenever a public administrator takes charge of an estate, of which he is entitled to take charge without letters of administration being issued, or under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath.

Official bond and oath.

Duty of persons in whose house stranger dies.

SEC. 945. DUTY OF PERSONS IN WHOSE HOUSE ANY STRANGER DIES.—Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of such premises, or anyone knowing the facts, must give immediate notice thereof to the public administrator; and in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the public administrator, or any party interested.

Inventory and account.

SEC. 946. MUST RETURN INVENTORY AND ADMINISTER ESTATES ACCORDING TO CHAPTERS 23 TO 36.—The public administrator must make and

return a perfect inventory of all estates taken into his possession, administer and account for the same according to the provisions of chapters 23 to 36, subject to the control and directions of the court.

Ante, pp. 1022-1078.

When another appointed administrator.

SEC. 947. WHEN ANOTHER PERSON IS APPOINTED ADMINISTRATOR OR EXECUTOR, PUBLIC ADMINISTRATOR TO DELIVER UP THE ESTATE.—If, at any time, letters testamentary or of administration are regularly granted to any other person on an estate of which the public administrator has charge, he must, under the order of the court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind in his possession or under his control.

Notice by civil officers of waste to property, etc.

SEC. 948. CIVIL OFFICERS TO GIVE NOTICE OF WASTE TO PUBLIC ADMINISTRATOR.—All civil officers must inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which, by reason thereof, ought to be in the possession of the public administrator.

Institution of suits.

SEC. 949. SUITS FOR PROPERTY OF DECEDENTS.—The public administrator must institute all suits and prosecutions necessary to recover the property, debts, papers, and other estate of the decedent.

Order to account.

SEC. 950. ORDER ON PUBLIC ADMINISTRATOR TO ACCOUNT.—The court may, at any time, order the public administrator to account for and deliver all the money and property of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

No interest in estates in his hands.

SEC. 951. NOT TO BE INTERESTED IN THE PAYMENTS FOR OR ON ACCOUNT OF THE ESTATES IN HIS HANDS.—The public administrator must not be interested in expenditures of any kind made on account of any estate he administers; nor must he be associated, in business or otherwise, with any one who is so interested.

Commissions.

Ante, p. 1058.

Proviso.

No commission, when estate below $1,000.

SEC. 952. COMMISSIONS OF PUBLIC ADMINISTRATOR.—The commissions to be charged by the public administrator shall be as prescribed in section 858: *Provided*, That no commissions shall be charged where it appears that the total assets of the estate do not exceed $1,000 in value.

Fees to be paid over to collector.

The public administrator shall pay over all such fees to the Collector of the Panama Canal to be covered into the Treasury of the United States as miscellaneous receipts.

Oaths to be administered by.

SEC. 953. PUBLIC ADMINISTRATOR TO ADMINISTER OATHS.—The public administrator may administer oaths in regard to all matters touching the discharge of his duties, or the administration of estates in his hands.

Further proceedings in administration by.

Ante, pp. 1022-1074.

SEC. 954. PRECEDING CHAPTERS APPLICABLE TO PUBLIC ADMINISTRATOR.—When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of chapters 23 to 34 of this code must govern, except that wherever notice is required to be given, such notice may, in the discretion of the court, be waived or be given by posting.

GUARDIAN AND WARD.

CHAPTER 36.—GUARDIAN AND WARD

Minors.

GUARDIANS OF MINORS

Appointment of guardians.

SEC. 955. APPOINTMENT OF GUARDIANS.—Either division of the district court, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the division, or who reside without the Canal Zone and have estate within the division.

Such appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. By petition.

NOTICE OF PROCEEDINGS.—Before making such appointment, the court must cause such notice as such court deems reasonable to be given to any person having the care of such minor, and to such relatives of the minor residing in the Canal Zone as the court may deem proper. In all cases notice must be given to the parents of the minor or proof made to the court that their addresses are unknown, or that, for other reason, such notice can not be given. Notice.

TEMPORARY CUSTODY PENDING PROCEEDINGS.—In all such proceedings, when it appears to the satisfaction of the court, either from a verified petition, or from affidavits, that the welfare of the minor will be imperiled if such minor is allowed to remain in the custody of the person then having the care of such minor, the court may make an order providing for the temporary custody of such minor until a hearing can be had on such petition. Temporary custody.

PROCEEDINGS WHERE MINOR LIABLE TO BE CARRIED OUT OF CANAL ZONE.—And when it appears to the court that there is reason to believe that such minor will be carried out of the jurisdiction of the court before which the application is made, or will suffer some irreparable injury before compliance with such order providing for the temporary custody of such minor can be enforced, such court may at the time of making such order providing for the temporary custody of such minor cause a warrant to be issued, reciting the facts, and directed to the marshal, commanding such officer to take such minor from the custody of the person in whose care such minor then is and place such minor in custody in accordance with the order of the court. When danger of removal from jurisdiction, etc.

SEC. 956. WHEN MINOR MAY NOMINATE GUARDIAN; WHEN NOT.—If the minor is under the age of fourteen years, the court may nominate and appoint his guardian. If he is fourteen years of age, he may nominate his own guardian, who, if approved by the court, must be appointed accordingly. Nomination of guardian by minor.

SEC. 957. WHEN APPOINTMENT MAY BE MADE BY COURT, WHEN MINOR IS OVER FOURTEEN.—If the guardian nominated by the minor is not approved by the court, or if the minor resides out of the Canal Zone, or if, after being duly cited by the court, he neglects for ten days to nominate a suitable person, the court or judge may nominate and appoint the guardian in the same manner as if the minor were under the age of fourteen years. By court.

SEC. 958. NOMINATION BY MINORS AFTER ARRIVING AT FOURTEEN.—When a guardian has been appointed by the court for a minor under the age of fourteen years, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. Nomination by minor when reaching fourteen years of age.

SEC. 959. WHO MAY BE GUARDIAN; MARRIAGE OF GUARDIAN DOES NOT AFFECT GUARDIANSHIP.—The father or the mother of a minor child under the age of fourteen years, if found by the court competent to discharge the duties of guardianship, is entitled to be appointed a guardian of such minor child, in preference to any other person. The person nominated by a minor of the age of fourteen years as his guardian, whether married or unmarried, may, if found by the court competent to discharge the duties of guardianship, be appointed as such guardian. The authority of a guardian is not extinguished nor affected by the marriage of the guardian. Who may be guardian. Authority not extinguished by marriage.

SEC. 960. POWERS AND DUTIES OF GUARDIAN.—Every guardian appointed has the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at Powers and duties.

the age of majority or marries, or until the guardian is legally discharged, unless he is appointed guardian only of the person of the ward. In that event, the guardian is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place in the Canal Zone, but not elsewhere without the permission of the court.

Bond.

SEC. 961. BOND OF GUARDIAN.—Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the court shall require of such person a bond to the minor, with sufficient sureties, to be approved by the judge, and in such sum as he shall order, which sum shall not be less than twice the value of the personal property and the probable value of the annual rents, issues and profits of property belonging to the minor; where, however, a surety company is authorized by law to furnish such bond, the court in its discretion may fix the amount of the bond given by such surety company at not less than the value of the personal property and the probable value of the annual rents, issues and profits of property belonging to the minor conditioned that the guardian will faithfully execute the duties of his trust according to law, and the following conditions shall form a part of such bond without being expressed therein:

Conditions of.

Inventory of estate of ward.

1. To make an inventory of all the estate, real and personal of his ward, that comes to his possession or knowledge, and to return the same within such time as the court may order.

Management of.

2. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward.

Accounting.

3. To render an account on oath of the property, estate, and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs, and at the expiration of his trust to settle his accounts with the court, or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto. Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form the letters of guardianship must be substantially the same as letters of administration, and the oath of the guardian must be indorsed thereon that he will perform the duties of his office as such guardian according to law.

Issue of letters.

Insertion of conditions in order appointing, by court.

SEC. 962. COURT MAY INSERT CONDITIONS IN ORDER APPOINTING GUARDIAN.—When any person is appointed guardian of a minor, the court may, with the consent of such person, insert in the order of appointment, conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor and for the care and custody of his property. The performance of such conditions shall be a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond shall be responsible.

Recording letters.

SEC. 963. RECORDING LETTERS OF GUARDIANSHIP.—All letters of guardianship issued under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the clerk of the court having jurisdiction of the persons and estates of the wards.

Maintenance of minor out of income of his property.

SEC. 964. MAINTENANCE OF MINOR OUT OF INCOME OF HIS PROPERTY.—If any minor having a father living has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard

being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Testamentary guardian, bond; powers limited.

SEC. 965. GUARDIAN TO GIVE BONDS; POWERS LIMITED.—Every testamentary guardian must qualify and has the same powers and must perform the same duties with regard to the person and estate of his ward as guardians appointed by the court, except so far as his powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed, and except that such guardian need not give bond unless directed to do so by the court.

Power of court to appoint guardian ad litem, etc., not impaired.

SEC. 966. POWER OF COURT TO APPOINT GUARDIANS AND NEXT FRIEND NOT IMPAIRED.—Nothing contained in this chapter affects or impairs the power of the court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

When power of guardian superseded.

SEC. 967. WHEN POWER OF GUARDIAN IS SUPERSEDED.—The power of a guardian appointed by a court is superseded:

1. By order of the court;

2. If the appointment was made solely because of the ward's minority, by his attaining majority;

3. The guardianship over the person of the ward, by the marriage of the ward.

Special notice of administrative proceedings, demand for.

SEC. 968. SPECIAL NOTICE OF ADMINISTRATIVE PROCEEDINGS; DEMAND FOR BY RELATIVES.—At any time after the issuance of letters of guardianship upon the estate of any minor, insane, or incompetent person, any relative of the ward, or the attorney for such relative, may serve upon the guardian, or upon the attorney for the guardian, and file with the clerk of the court wherein administration of such ward's estate is pending, a written request, stating that he desires special notice of any or all of the following-mentioned matters, steps, or proceedings in the administration of said estate, to wit:

1. Filing of the return of sales of any property of the ward's estate.

2. Filing of accounts.

3. Filing of application for removal of ward's property to any foreign jurisdiction.

4. Filing of petitions for partition of any property of the ward's estate.

5. Proceedings for removal, suspension or discharge of the guardian, or final determination of the guardianship.

Contents of request; notice.

REQUEST WHAT TO STATE; NOTICE OF PROCEEDINGS.—Such request shall state the post-office address of such relative, or his attorney, and thereafter a brief notice of the filing of any such petitions, applications, or accounts, or proceedings, except petitions for sale of perishable property, or other personal property which will incur expense or loss by keeping, shall be addressed to such relative, or his attorney, at his stated post-office address, and deposited in the post office, within two days after the filing of such petition, account, application, or the commencement of such proceeding; or personal service of such notices may be made on such relative, or his attorney, within said two days, and such personal service shall be equivalent to such deposit in the post office, and proof of mailing or of personal service must be filed with the clerk before the hearing of any such matter.

Finding that notice given.

FINDING THAT NOTICE GIVEN.—If, upon the hearing it shall appear to the satisfaction of the court that the said notice has been regu-

larly given, the court shall so find in its order or judgment, and such judgment shall be final and conclusive upon all persons.

Insane and incompetents, in general.

GUARDIANS OF INSANE AND INCOMPETENT PERSONS IN GENERAL

Guardians of.

SEC. 969. GUARDIANS OF INSANE AND OTHER INCOMPETENT PERSONS.—When it is represented to the district court or judge, upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, such court or judge must cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced on the hearing, provided that when such person is a patient at a hospital in the Canal Zone, the certificate of the medical superintendent or acting medical superintendent of such hospital, to the effect that such patient is unable to attend on the hearing shall be prima facie evidence of such fact.

Appointment after hearing.

SEC. 970. APPOINTMENT OF GUARDIAN BY COURT AFTER HEARING.—If, after a full hearing and examination upon such petition, it appears to the court that the person in question is incapable of taking care of himself and managing his property, such court must appoint a guardian of his person and estate, or person or estate, with the powers and duties in this chapter specified.

Appointment as.

SEC. 971. APPOINTMENT AS GUARDIAN.—In awarding letters of guardianship of the person and estate, or person or estate, of an insane or incompetent person, the court shall appoint as guardian such person as may have been designated pursuant to section 166e of the Civil Code, in which cases such persons shall be appointed unless good cause to the contrary be shown.

Post, p. 1145.

Powers and duties.

SEC. 972. POWERS AND DUTIES OF GUARDIANS.—Every guardian appointed, as provided in the preceding section, has the care and custody of the person of his ward and the management of all his estate, or the care and custody of the person of his ward or the management of all his estate, according to the order of appointment, until such guardian is legally discharged, and he must give bond to such ward in like manner and with like conditions as before prescribed with respect to the guardian of a minor.

Proceeding for restoration to capacity, by petition.

SEC. 973. PROCEEDING FOR RESTORATION TO CAPACITY.—Any person who has been declared insane or incompetent, or the guardian, or any relative of such person within the third degree, or any friend, may apply, by petition, to the division of the district court in which he was declared insane, to have the fact of his restoration to

Verification.

capacity judicially determined. The petition must be verified, and must state that such person is then sane or competent. Upon

Day for hearing on.

receiving the petition, the court must appoint a day for a hearing before the court, and, if the petitioner requests it, must order an investigation before a jury, which must be summoned and impaneled

Notice.

in the same manner as juries in civil actions. The court must cause notice of the trial to be given to the guardian of the person so declared insane or incompetent, if there is a guardian, and to his or her husband or wife, if there is one, and to his or her father or

Trial.

mother, if living in the Canal Zone. On the trial, the guardian or relative of the person so declared insane or incompetent, and, in the discretion of the court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the

Judgment.

court on its own motion. If it is found that the person is of sound mind, and capable of taking care of himself and his property, his restoration to capacity must be adjudged, and the guardianship of such person, if such person is not a minor, must cease.

"Incompetent," defined.

SEC. 974. DEFINITION OF INCOMPETENT.—The phrase "incompetent," "mentally incompetent," and "incapable," as used in this chapter, shall be construed to mean any person who, though not insane, is, by reason of old age, disease, weakness of mind, or from any other cause, unable, unassisted, to properly manage and take care of himself or his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons.

Public administrator as guardian.

SEC. 975. PUBLIC ADMINISTRATOR AS GUARDIAN OF ESTATES OF INSANE EMPLOYEES, OTHER INSANE OR INCOMPETENT PERSONS, AND MINORS.—The public administrator shall take charge of estates of persons employed in the Canal Zone or the Republic of Panama by The Panama Canal or Panama Railroad Company or members of their families who have been adjudged insane by the district court or by a competent court of any State, where such estates consist of personal property and no legal guardian has been appointed.

Appointment as, in discretion of district court.

The district court may in its discretion appoint the public administrator guardian of the estate of any other insane or incompetent person or of any minor.

Compliance with guardianship requirements.

The public administrator shall comply with all of the provisions of this chapter with respect to the guardianship of similar estates by other persons: *Provided, however*, That his official bond and oath shall satisfy the requirements with respect to a guardian's bond and oath: *And provided further*, That wherever notice is required to be given, such notice may, in the discretion of the court, be waived or be given by posting.

Provisos.
Official bond to satisfy.
Waiving of notice.

CROSS REFERENCE

Payment to public administrator of sums due insane persons from Canal or Railroad, see section 942. *Ante*, p. 1077.

COROZAL HOSPITAL: ADMISSION, KEEPING, AND DISCHARGE OF PERSONS

Corozal Hospital.

Keeping insane in jail.

SEC. 976. KEEPING OF INSANE PERSONS IN JAIL.—No person under observation for insanity or declared to be insane shall be kept in jail, prison, or other similar institution, but shall be kept in suitable quarters within the Corozal Hospital or at such other place as may be deemed advisable by the superintendent of Corozal Hospital.

Admission in general, to hospital.

SEC. 977. ADMISSION OF PATIENTS IN GENERAL.—Except as otherwise provided in respect to the admission of insane patients from the Republic of Panama, and the admission of members of the United States Army, Navy, and Marine Corps, and beneficiaries of the United States Public Health Service for observation and care pending their transfer to the United States, no person shall be admitted or detained as a patient in the Corozal Hospital except upon the order of the district judge of the Canal Zone, provided that if a patient is in a state of violent insanity he may be admitted at once by the superintendent of Corozal Hospital, without an order from the court, into the quarters provided for the observation of persons alleged to be insane, upon the written request of any physician employed by the United States Government; or such patient may be admitted to the observation quarters by said superintendent upon his own authority.

Duty of superintendent to file report.

It shall be the duty of the superintendent of Corozal Hospital to file a written report with the clerk of the district court within forty-eight hours after the patient has been admitted to the observation quarters, which report shall set out the name, age, and physical condition of the patient, together with the name of physician attending patient at time of admission, and as soon as the clerk shall have received the report, he shall enter it upon the docket and the district judge shall proceed to examine and determine the case in like manner

as if the petition had been presented to him prior to the patient's admission into observation quarters.

Petition for confinement of insane.

SEC. 978. PETITION FOR CONFINEMENT OF INSANE PERSONS.—To obtain the judicial order provided for in section 977, it shall be necessary for a relative of the person alleged to be insane, or a physician or other interested person in the Canal Zone, to present a petition, duly subscribed and sworn to by the petitioner, to the judge of the district court, which petition shall state the sex, age, and nationality of patient, if known, and the facts showing the patient's mental infirmity, and, if possible, the history of the case and the form of insanity with which he is suffering and the attending circumstances making it necessary that he be confined in the asylum. If such petition is presented by other than a relative, and there is a known relative within or near the Canal Zone, notice thereof shall be given to such relative. The petition shall be accompanied by a certificate signed by one or more reputable physicians to the effect that in their opinion such person is insane.

Prompt hearing.

SEC. 979. HEARING TO BE PROMPT; ORDERING CUSTODY FOR OBSERVATION.—The petition provided for in section 978 shall take precedence over all other matters pending before the court, and if the facts stated therein are sufficient to satisfy the court of the insanity of the person sought to be confined, orders shall be issued at once directing that the person alleged to be insane be taken in custody for observation.

Custody for observation.

Admission of patient for.

SEC. 980. ADMISSION OF PATIENT FOR OBSERVATION; REPORT ON SANITY.—The order of the judge directing that the person alleged to be insane be placed under observation shall be sufficient authority for the superintendent of Corozal Hospital to admit the patient into the hospital or other suitable quarters and to detain him for the purpose of observation.

Report on sanity.

Within thirty days after the patient has been placed under observation the superintendent of Corozal Hospital shall file with the clerk of the court a written report stating whether the patient is sane or insane, and the facts upon which such statement is based. If the observation shall show that the patient is not insane he shall be set at liberty by the superintendent of Corozal Hospital at once, and such action shall be noted in the report submitted to the court. If the observation shall show that the patient is insane, it shall be the duty of the court to render judgment therein, either committing the patient to the Corozal Hospital or directing that he be turned over to his relatives or friends who are able and willing to care for him.

Contest of.

SEC. 981. CONTESTING REPORT ON SANITY.—The relatives of the person alleged to be insane, or the district attorney, may appear and contest the report of the superintendent, and in such cases the judge shall hear the evidence presented by the parties and render judgment thereon, as provided in section 980.

Temporary release.

SEC. 982. TEMPORARY RELEASE OF PATIENTS.—Whenever any patient who is not serving a sentence for violation of the criminal laws of the Canal Zone has shown such improvement in his mental condition as would, in the opinion of the superintendent, warrant his temporary release for the purpose of determining whether such improvement is permanent and would eventually warrant the discharge of the patient, the superintendent may release such patient for such period as may be deemed proper by the superintendent after the latter by adequate investigation has satisfied himself that the patient has relatives or friends who are able and willing to receive and care for such patient. If, during such release, it shall appear to the superintendent that the patient should be discharged, a statement

as provided in section 984 hereof shall be filed with the clerk of the court.

Application for discharge.

SEC. 983. APPLICATION FOR DISCHARGE OF PATIENT.—Any person interested in an inmate of the Corozal Hospital, who believes such inmate is improperly detained therein, may make application to the district judge for the discharge of such patient. Upon receipt of such application the judge shall issue an order to the superintendent of Corozal Hospital, to make a report on the patient's condition, and upon the receipt of such report shall consider the case, and, in his discretion, may grant or deny the application. The judge may cause the patient to be examined by two competent physicians, who shall report in writing as to the condition of the patient.

Discharge.

SEC. 984. DISCHARGE OF PATIENTS.—Any patients, except those serving sentences for violation of the criminal laws of the Canal Zone, may be discharged by the superintendent. He shall file with the clerk of the court a written statement that in his judgment such patient has recovered or that the discharge will not be detrimental or dangerous to the public welfare or injurious to the patient: *Provided*, That before discharging any patient who has not recovered, the superintendent shall satisfy himself by adequate investigation that the relatives or friends of the patient are able and willing to receive and care for such patient or that suitable measures for deportation have been taken.

Proviso.
Provision for future care of discharged.

Committing insane prisoner to hospital.

SEC. 985. COMMITTING INSANE PRISONERS TO HOSPITAL; DISCHARGE.—If any person confined in a prison or penitentiary under the sentence of a court become insane, he shall be committed to the Corozal Hospital by the judge of the district court. In all such cases the provisions of sections 976 to 986 relating to the period of observation of the patient and the trial of the issue as to his insanity shall be observed. Whenever a person is committed to the Corozal Hospital under the provisions of this section, the order of commitment issued by the court shall include a statement of the offense of which the person was convicted, the term of his imprisonment and the date upon which said term is to expire. Should such person be discharged from the Corozal Hospital before the date of the expiration of his term of imprisonment, he shall be returned to the penal institution from which he was taken.

Ante, p. 1083.

Discharge before expiration of sentence.

Insane defendants, provisions of Code of Criminal Procedure on, not affected.
Ante, p. 1083.

SEC. 986. NO REPEAL OF PROVISIONS RESPECTING INQUIRY INTO INSANITY OF DEFENDANTS.—Nothing contained in sections 976 to 985 shall be construed to repeal or modify the provisions of the Code of Criminal Procedure of the Canal Zone relating to the inquiry into the insanity of the defendants before trial or after conviction.

CROSS REFERENCE

Inquiry into sanity of defendants before trial or after conviction, see sections 353 to 358 of the Code of Criminal Procedure.

Patients in classes excepted from provisions herein.
Ante, p. 1083.
Insane, from Republic of Panama.

SEC. 986½. PATIENTS IN CLASSES EXCEPTED FROM THE PRECEDING SECTIONS 976 TO 986, INCLUSIVE.—Insane patients from the Republic of Panama may be admitted and detained in the Corozal Hospital, and discharged therefrom, in accordance with the existing agreements between the Canal Zone authorities and the Panaman authorities, or under such changes and modifications of said agreements as may be made from time to time.

Members of Army, Navy, etc.

The superintendent of Corozal Hospital is authorized to receive and detain as patients, insane members of the United States Army, Navy, and Marine Corps, and beneficiaries of the United States Public Health Service, for observation and care pending their transfer to the United States, upon the order of the official in charge of the respective services in the Canal Zone.

Powers and duties of guardians.

POWERS AND DUTIES OF GUARDIANS

Payment of debts from ward's estate.

SEC. 987. GUARDIAN TO PAY DEBTS OF WARD FROM WARD'S ESTATE.—Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward out of his personal estate and the income of his real estate, if sufficient; if not, then out of his real estate upon selling or mortgaging it and disposing of the proceeds in the manner provided in sections 997 to 1002.

Recovery of debts, etc.

SEC. 988. GUARDIAN TO RECOVER DEBTS DUE HIS WARD AND REPRESENT HIM.—Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the court, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person be appointed for that purpose.

Management of estate.

SEC. 989. GUARDIAN TO MANAGE ESTATE FRUGALLY, MAINTAIN WARD AND SELL OR MORTGAGE REAL ESTATE.—Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell or mortgage the real estate, as provided in this code, and must apply the proceeds of such sale or mortgage, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Support of ward.

Sale or mortgage of real estate.

Support of wife from her estate.

SEC. 990. SUPPORT OF WIFE FROM HER ESTATE.—If the husband is unable to provide suitably for the care or support of a wife over whose estate a guardian has been appointed by reason of incompetency, the expense of providing such care or support, may, to the extent necessary, be charged against and defrayed out of such estate, as previously directed by the court or as subsequently approved by the court in settling the accounts of the guardian of the estate; for this purpose the guardian may sell or mortgage estate of the ward as provided in this code.

Maintenance, support, education of ward, how enforced.

SEC. 991. MAINTENANCE, SUPPORT, AND EDUCATION OF WARD, HOW ENFORCED.—When a guardian has advanced, for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and the same is made to appear to the satisfaction of the court, by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements. Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support, or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support, or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

Powers of guardian, partition proceedings.

SEC. 992. GUARDIANS, POWERS OF, IN PARTITION.—The guardian may join in and assent to a partition of the real or personal estate of the ward, wherever such assent may be given by any person: *Provided*, That such assent can only be given after the court having jurisdiction over said estate shall grant an order conferring such authority, which order shall only be made after a hearing in open court upon

Proviso.
Prior authorization by court.

the petition of the guardian after notice of at least ten days, mailed by the clerk of the court to all the known relatives of the ward residing in the Canal Zone. The guardian may also consent to a partition of the real or personal estate of his ward without action, and agree upon the share to be set off to such ward, and may execute a release in behalf of his ward to the owners of the shares, of the parts to which they may be respectively entitled, upon obtaining from said court having jurisdiction over said estate, authority to so consent after a hearing in open court upon the petition of the guardian after notice of at least ten days, mailed by the clerk of the court to all the known relatives of the ward residing in the Canal Zone.

Inventory of estate.

SEC. 993. INVENTORY OF WARD'S ESTATE; REFUSAL OF GUARDIAN TO RETURN INVENTORY.—Every guardian must return to the court a verified inventory of the estate of his ward within thirty days after his appointment. He must annually thereafter, and at such other times as directed by the court, render a verified account of the estate of his ward. All the estate of the ward described in the first inventory must be appraised by appraisers, appointed, sworn, and acting in the manner provided for regulating the settlement of the estates of decedents. Such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the court in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property, has been succeeded to, or acquired by any ward, or for his benefit, the like proceedings must be had for the return and appraisement thereof and the service of the same as are herein provided in relation to the first inventory and return. If within the time prescribed, or within such further time, not exceeding two months which the court or judge shall for reasonable cause allow, the guardian neglects or refuses to return the inventory or render his account, the court may, upon notice, revoke the letters of guardianship and the guardian shall be liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Refusal to return.

Accounting of.

SEC. 994. ACCOUNT OF GUARDIAN.—The guardian must upon the expiration of a year from the time of his appointment and as often thereafter as he may be required, present his account to the court for settlement and allowance. The termination of the relation of guardian and ward by the death of either guardian or ward or by the ward attaining his majority or being restored to capacity shall not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian.

Allowance of accounts, joint guardians.

SEC. 995. ALLOWANCE OF ACCOUNTS OF JOINT GUARDIANS.—When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any of them.

Expenses and compensation.

SEC. 996. EXPENSES AND COMPENSATION OF GUARDIANS.—Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable. He must also be allowed all reasonable and proper disbursements, made after the legal termination of the guardianship, but while that relation, by consent or acquiescence of the parties, still subsists in fact, and before the discharge of the guardian by the court, and which were made by the consent, express or implied, of the ward, and for his benefit or the benefit of his estate.

Sale of property, etc.

SALE OF PROPERTY AND DISPOSITION OF THE PROCEEDS

Authority for, when insufficient income from estate.

SEC. 997. WHEN INCOME FROM WARD'S ESTATE IS INSUFFICIENT.—When the income of an estate under guardianship is insufficient to maintain the ward and his family or to maintain and educate the ward when a minor, or to pay for his care, treatment, and support, if confined in a hospital for the insane in the Canal Zone, his guardian may sell his real or personal estate, or mortgage the real estate for that purpose subject to confirmation of such sale or mortgage by the court.

Application of proceeds.

SEC. 998. APPLICATION OF PROCEEDS OF SALES.—If the estate is sold for the purposes mentioned in this subchapter, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investment of.

SEC. 999. INVESTMENT OF PROCEEDS OF SALES.—If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the court.

Sales to conform to law governing executors.

Ante, pp. 1022–1076.

SEC. 1000. SALES OF PROPERTY TO CONFORM TO LAW GOVERNING EXECUTORS.—All the proceedings by guardians concerning sales of property of their wards, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, allowance of commissions, accounting and settlement of accounts, must be had and made as required by the provisions of chapters 23 to 35 of this code concerning estates of decedents, unless otherwise specially provided in this chapter. All known relatives of the ward within the third degree residing in the Canal Zone whose addresses are known to the guardian shall within two days after filing of the return of sale be served by mail with a brief notice of the time set for hearing of the return.

Proceedings in sale of real property.

Ante, pp. 1056–1057.

SEC. 1001. PROCEEDINGS FOR COMPLETION OF SALES BY GUARDIANS.—All proceedings for the completion of contracts for the sale of real estate by guardians must be had and made as required by the provisions of chapters 23 to 35 of this code concerning the conveyance of real estate by executors and administrators under sections 841 to 851, and said sections are hereby made applicable to conveyances by guardians as provided by section 1021.

Post, p. 1091.

Investment of money by order of court.

SEC. 1002. COURT MAY ORDER THE INVESTMENT OF MONEY OF THE WARD.—The court, on the application of a guardian, or any person interested in the estate of any ward, after such notice to persons interested therein as the court shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in any manner most to the interest of all concerned therein, and the court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects as circumstances require.

Nonresident guardians and wards.

NONRESIDENT GUARDIANS AND WARDS

Appointment of.

SEC. 1003. GUARDIANS OF NONRESIDENT PERSONS.—The district court may appoint a guardian of the person and estate, or either, of a minor, insane, or incompetent person, who has no guardian within

the Canal Zone, legally appointed by will, deed, or otherwise, and who resides without the Canal Zone, and has estate within the division or, who, though not having such estate, is within the division, upon petition of any friend of such person or any one interested in his estate, in expectancy or otherwise. Before making such appointment, the court must cause notice to be given to all persons interested, in such manner as such court deems reasonable.

Powers and duties.

SEC. 1004. POWERS AND DUTIES OF GUARDIANS APPOINTED UNDER PRECEDING SECTION.—Every guardian, appointed under section 1003, has the same powers and performs the same duties, with respect to the estate of the ward found within the Canal Zone, and with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Bond.

SEC. 1005. SUCH GUARDIANS TO GIVE BONDS.—Every guardian must give bond to the ward, in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in the Canal Zone.

Extent of guardianship.

SEC. 1006. TO WHAT GUARDIANSHIP SHALL EXTEND.—The guardianship which is first lawfully granted of any person residing without the Canal Zone extends to all the estate of the ward within the Canal Zone.

Removal of property.

SEC. 1007. REMOVAL OF NONRESIDENT WARD'S PROPERTY.—When the guardian and ward are both nonresidents, and the ward is entitled to property in the Canal Zone, which may be removed to a state or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the state or foreign country of the residence of the ward, upon the application of the guardian to the division of the district court in which the estate of the ward, or the principal part thereof, is situated.

Application for.

Procedure on.

SEC. 1008. PROCEEDINGS ON SUCH REMOVAL.—The application must be made upon ten days' notice to the resident executor, administrator, or guardian, if there be such, and upon such application the nonresident guardian must produce and file a certificate, under the hand of the clerk and seal of the court, from which his appointment was derived, showing:

Certificate to be filed; contents.

1. A transcript of the record of his appointment.

2. That he has entered upon the discharge of his duties.

3. That he is entitled, by the laws of the State, of his appointment to the possession of the estate of the ward or must produce and file a certificate, under the hand and seal of the clerk of the court having jurisdiction in the country of his residence, of the estates of persons under guardianship, or of the highest court of such country, attested by a minister, consul, or vice consul of the United States, resident in such country, that, by the laws of such country, the applicant is entitled to the custody of the estate of his ward, without the appointment of any court. Upon such application, unless good cause to the contrary is shown, the court must make an order granting to such guardian leave to take and remove the property of his ward to the State or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

Order.

Discharge.

SEC. 1009. DISCHARGE OF GUARDIANS.—Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the clerk of the court a receipt therefor of a foreign

guardian of such absent ward, and transmitting a duplicate receipt, or a certified copy of such receipt, to the court from which such nonresident guardian received his appointment.

General and miscellaneous provisions.

GENERAL AND MISCELLANEOUS PROVISIONS

Examination of persons suspected of defrauding wards, etc.

SEC. 1010. EXAMINATION OF PERSONS SUSPECTED OF DEFRAUDING WARDS OR CONCEALING PROPERTY.—Upon complaint made by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, smuggled, or fraudulently disposed of, any of the money, goods, or effects, or an instrument in writing belonging to the ward or to his estate, the district court may cite such suspected person to appear before such court, and may examine and proceed against him on such charge in the manner provided in chapters 23 to 35 with respect to persons suspected of and charged with concealing, embezzling, smuggling, or fraudulently disposing of the effects of a decedent.

Removal and resignation of guardian, surrender of estate.

SEC. 1011. REMOVAL AND RESIGNATION OF GUARDIAN, AND SURRENDER OF ESTATE.—When a guardian, appointed either by the testator or the court, becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the district court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the court may appoint another in the place of the guardian who resigned or was removed.

Termination of guardianship.

SEC. 1012. GUARDIANSHIP, HOW TERMINATED.—The marriage of a minor ward terminates the guardianship of the person of such ward, but not the estate; and the guardian of an insane or other person may be discharged by the court, when it appears on the application of the ward or otherwise, that the guardianship is no longer necessary.

New bond.

SEC. 1013. NEW BOND, WHEN REQUIRED.—The court may require a new bond to be given by a guardian whenever such court deems it necessary, and may discharge the existing sureties from further liability, after due notice given as such court may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Filing of bond; action on.

SEC. 1014. GUARDIAN'S BOND TO BE FILED; ACTION ON.—Every bond given by a guardian must be filed and preserved in the office of the clerk of the district court, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward, or of any person interested in the estate.

Period of limitation on.

SEC. 1015. LIMITATION OF ACTIONS ON GUARDIAN'S BOND.—No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

Limitation of actions for recovery of property sold.

SEC. 1016. LIMITATION OF ACTIONS FOR THE RECOVERY OF PROPERTY SOLD.—No action for the recovery of any estate, sold by a guardian, can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

Appointment of more than one guardian.

SEC. 1017. MORE THAN ONE GUARDIAN OF A PERSON MAY BE APPOINTED.—The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, each of whom must give a separate bond, and be governed and liable in all respects as a sole guardian.

Entry of order appointing guardian.

SEC. 1018. ORDER APPOINTING GUARDIAN, HOW ENTERED.—Any order appointing a guardian becomes a decree of the court and must be entered at length in the minute book of the court or must be signed by the judge and filed.

Practice, rules of, relating to estates of decedents, to govern. *Ante*, pp. 1022–1076.

The provisions of chapters 23 to 35 relative to the estates of decedents, so far as they relate to the practice in the district court, apply to proceedings under this chapter.

Sureties, qualifications, etc., of. *Ante*, p. 1001.

SEC. 1019. PROVISIONS OF SECTIONS 532 AND 533 APPLY TO GUARDIANS.—The provisions of sections 532 and 533 are hereby declared to apply to guardians appointed by the court, and to the bonds taken or to be taken from such guardians, and to the sureties on such bonds.

Decree authorizing guardian to make conveyances of realty, pursuant to contract.

SEC. 1020. COURT MAY MAKE DECREE AUTHORIZING GUARDIAN TO MAKE CONVEYANCE FOR INCOMPETENT.—When a person who is bound by a contract in writing to convey any real estate shall afterwards and before making the conveyance become and be adjudged to be an incompetent person, the court may make a decree authorizing and directing his guardian to convey such real estate to the person entitled thereto. Such decree may be made under the provisions of sections 841 to 851, all of which provisions are hereby incorporated in this section; the word incompetent being substituted for the word deceased or decedent and the word guardian being substituted for the words administrator or executor, respectively, wherever said words occur.

Procedure. *Ante*, pp. 1056–1057.

When contract made by ward's ancestor, etc.

SEC. 1021. CONVEYANCE BY GUARDIAN.—When a person who is bound by contract in writing to convey any real estate, or to transfer any personal property, dies before making conveyance or transfer, and in all cases when such decedent, if living might be compelled to make such conveyance or transfer, the court, having jurisdiction of the guardianship proceedings of such minor may make a decree authorizing and directing the guardian of any minor, who has succeeded by distribution to the estate of such deceased person, to convey or transfer such real estate or personal property to the person entitled thereto.

Attorney's fees against minor fixed by court.

SEC. 1022. ATTORNEY'S FEES AGAINST MINOR FIXED BY COURT; JUDGMENT NOT IN EXCESS OF $500.—All contracts for attorney's fees made by or for the benefit of minors shall be void, and whenever a judgment shall be recovered by or on behalf of a minor, the attorney's fees chargeable against said minor shall be fixed by the court in which said judgment is rendered; and if said judgment is for money, and there is no general guardian of said minor, one shall be appointed by the court, and the entire amount of the judgment shall be paid to and shall be cared for by such general guardian, under the control of the court: *Provided*, That where a minor has brought an action by a guardian ad litem and has recovered a money judgment not in excess of $500, exclusive of costs, and the guardian ad litem is a parent or blood relative of said minor, then, with the approval of the court that rendered the judgment the whole amount of said judgment may be paid directly to such guardian ad litem without any bond being required therefor. The court in any of the cases provided for herein may direct the amount fixed as attorney's fees to be paid directly to the attorney, and the balance to be paid to such guardian ad litem of said minor, or to the general guardian of said minor if a general guardian has been appointed or is required by the court.

Proviso. Payment of judgment below $500 recovered by minor.

Compromise of minor's claim by parent.

SEC. 1023. PARENT'S RIGHT TO COMPROMISE CLAIM OF MINOR.—Where a minor shall have a disputed claim for money against a third person, the father, and if the father be dead or has deserted or abandoned the minor, then the mother of said minor, shall have the right to compromise such claim, but before the compromise shall be valid or of any effect the same shall be approved by the division of the district court where the minor resides, upon a verified petition in writing, regularly filed with said court. If the court approves such compromise, the said district court may direct the money paid to the father or mother of such minor, with or without the filing of any bond, or it may require a general guardian or guardian ad litem to be duly appointed and the money to be paid to such guardian or guardian ad litem with or without a bond as in the discretion of the court seems to the best interests of said minor. The clerk of the district court shall not charge any fee for filing said petition for leave to compromise or for placing the same upon the calendar to be heard by the court.

Validity subject to approval of district court.

Disposition of money.

ESTATES OF MISSING PERSONS.

CHAPTER 37.—ESTATES OF MISSING PERSONS

Appointment of trustees for.

SEC. 1024. TRUSTEES OF THE ESTATES OF MISSING PERSONS; APPOINTMENT OF, BY THE COURT.—Whenever any resident of the Canal Zone, who owns or is entitled to the possession of any real or personal property situate therein, is missing, or his whereabouts unknown, for ninety days, and a verified petition is presented to the division of the district court of which he is a resident by his wife or any of his family or friends, representing that his whereabouts has been, for such time, and still is, unknown, and that his estate requires attention, supervision, and care of ownership, the court must order such petition to be filed, and appoint a day for its hearing, not less than ten days from the date of the order.

Petition for.

Notice and hearing.

NOTICE AND HEARING.—The clerk of the court must thereupon publish, for at least ten days prior to the day so appointed, a notice in some newspaper of general circulation in the Canal Zone, stating that such petition will be heard at the court room of the court at the time appointed for the hearing. The court may direct further notice of the application to be given in such manner and to such persons as it may deem proper. At the time so fixed for such hearing, or at any subsequent time to which the hearing may be postponed, the court must hear the petition and the evidence offered in support of or in opposition thereto, and, if satisfied that the allegations thereof are true, and that such person remains missing, and his whereabouts unknown, must appoint some suitable person to take charge and possession of such estate, and manage and control it under the direction of the court.

Preference of wife or nominee.

PREFERENCE OF WIFE OR NOMINEE.—In appointing a trustee, the court must prefer the wife of the missing person (if any such there is), or her nominee, and, in the absence of a wife, some person, if such there is who is willing to act, entitled to participate in the distribution of the missing person's estate were he dead.

Bond.
Ante, p. 1034.

SEC. 1025. BONDS TO BE GIVEN BY TRUSTEES.—Every person appointed under the provisions of section 1024 must give bond in the amount and as provided for in section 731.

Powers and duties.

SEC. 1026. POWERS AND DUTIES OF TRUSTEES.—The trustee must take possession of the real and personal estate in the Canal Zone of such missing person, and collect and receive the rents, income, and proceeds thereof, collect all indebtedness owing to him, and pay the expenses thereof out of the trust funds, and pay such indebtedness of the missing person as may be authorized by the court. The court

may direct the trustee to pay to the person or persons constituting the family of the missing person such sum or sums of money for family expenses and support from the income of the estate as it may, from time to time, determine. The trustee must, from time to time, when directed by the court, account to and with it for all his acts as trustee, and the court may, at any time, upon good cause shown, remove any trustee, and appoint another in his place.

CHAPTER 38.—EVIDENCE

EVIDENCE.

GENERAL DEFINITIONS AND DIVISIONS

General definitions and divisions.

SEC. 1027. DEFINITION OF EVIDENCE.—Judicial evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact. "Evidence."

SEC. 1028. DEFINITION OF PROOF.—Proof is the effect of evidence, the establishment of a fact by evidence. "Proof."

SEC. 1029. DEFINITION OF LAW OF EVIDENCE.—The law of evidence, which is the subject of this chapter, is a collection of general rules established by law: "Law of evidence."

1. For declaring what is to be taken as true without proof;
2. For declaring the presumptions of law, both those which are disputable and those which are conclusive; and
3. For the production of legal evidence;
4. For the exclusion of whatever is not legal;
5. For determining, in certain cases, the value and effect of evidence.

SEC. 1030. DEGREE OF CERTAINTY REQUIRED TO ESTABLISH FACTS.—The law does not require demonstration; that is, such a degree of proof as, excluding possibility of error, produces absolute certainty; because such proof is rarely possible. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Degree of certainty required.

SEC. 1031. FOUR KINDS OF EVIDENCE SPECIFIED.—There are four kinds of evidence: Kinds of evidence.

1. The knowledge of the court.
2. The testimony of witnesses.
3. Writings.
4. Other material objects presented to the senses.

SEC. 1032. SEVERAL DEGREES OF EVIDENCE SPECIFIED.—There are several degrees of evidence: Degrees.

1. Primary and secondary.
2. Direct and indirect.
3. Prima facie, partial, satisfactory, indispensable, and conclusive.

SEC. 1033. PRIMARY EVIDENCE DEFINED.—Primary evidence is that kind of evidence which, under every possible circumstance, affords the greatest certainty of the fact in question. Thus, a written instrument is itself the best possible evidence of its existence and contents. "Primary evidence."

SEC. 1034. SECONDARY EVIDENCE DEFINED.—Secondary evidence is that which is inferior to primary. Thus, a copy of an instrument or oral evidence of its contents is secondary evidence of the instrument and contents. "Secondary."

SEC. 1035. DIRECT EVIDENCE DEFINED.—Direct evidence is that which proves the fact in dispute, directly, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. For example, if the fact in dispute be an agreement, the evidence of a witness who was present and witnessed the making of it, is direct. "Direct."

"Indirect." SEC. 1036. INDIRECT EVIDENCE DEFINED.—Indirect evidence is that which tends to establish the fact in dispute by proving another, and which, though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact, from which the fact in dispute is inferred.

"Prima facie." SEC. 1037. PRIMA FACIE EVIDENCE DEFINED.—Prima facie evidence is that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence. For example, the certificate of a recording officer is prima facie evidence of a record, but it may afterwards be rejected upon proof that there is no such record.

"Partial." SEC. 1038. PARTIAL EVIDENCE DEFINED.—Partial evidence is that which goes to establish a detached fact, in a series tending to the fact in dispute. It may be received, subject to be rejected as incompetent, unless connected with the fact in dispute by proof of other facts. For example, on an issue of title to real property, evidence of the continued possession of a remote occupant is partial, for it is of a detached fact, which may or may not be afterwards connected with the fact in dispute.

"Indispensable." SEC. 1039. INDISPENSABLE EVIDENCE DEFINED.—Indispensable evidence is that without which a particular fact can not be proved.

"Conclusive." SEC. 1040. CONCLUSIVE EVIDENCE DEFINED.—Conclusive or unanswerable evidence is that which the law does not permit to be contradicted. For example, the record of a court of competent jurisdiction can not be contradicted by the parties to it.

"Cumulative." SEC. 1041. CUMULATIVE EVIDENCE DEFINED.—Cumulative evidence is additional evidence of the same character, to the same point.

"Corroborative." SEC. 1042. CORROBORATIVE EVIDENCE DEFINED.—Corroborative evidence is additional evidence of a different character, to the same point.

General principles.

GENERAL PRINCIPLES OF EVIDENCE

Sufficiency of single witness. SEC. 1043. ONE WITNESS SUFFICIENT TO PROVE A FACT.—The direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact, except perjury and treason.

Testimony confined to personal knowledge. SEC. 1044. TESTIMONY CONFINED TO PERSONAL KNOWLEDGE.—A witness can testify of those facts only which he knows of his own knowledge; that is, which are derived from his own perceptions, except in those few express cases in which his opinions or inferences, or the declarations of others, are admissible.

Exceptions; opinion, hearsay.

Testimony under oath and in open court. SEC. 1045. TESTIMONY TO BE IN PRESENCE OF PERSONS AFFECTED.—A witness can be heard only upon oath or affirmation, and upon a trial he can be heard only in the presence and subject to the examination of all the parties, if they choose to attend and examine.

Credibility of. SEC. 1046. WITNESS PRESUMED TO SPEAK THE TRUTH.—A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

Rights of party not affected by act of another. SEC. 1047. RIGHTS OF ONE PERSON NOT AFFECTED BY ACT OF ANOTHER.—The rights of a party can not be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one can not affect another.

Declarations of predecessor in title. SEC. 1048. DECLARATIONS OF PREDECESSOR IN TITLE EVIDENCE.—Where, however, one derives title to real property from another, the

declaration, act, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

Declarations a part of transaction.

SEC. 1049. DECLARATIONS WHICH ARE A PART OF THE TRANSACTION.—Where, also, the declaration, act, or omission forms part of a transaction, which is itself the fact in dispute, or evidence of that fact, such declaration, act, or omission is evidence, as part of the transaction.

Relating to third person.

SEC. 1050. EVIDENCE RELATING TO THIRD PERSON.—And where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against such person is prima facie evidence between the parties.

Pedigree, declaration of decedent.

SEC. 1051. DECLARATION OF DECEDENT EVIDENCE OF PEDIGREE.—The declaration, act, or omission of a member of a family who is a decedent, or out of the jurisdiction, is also admissible as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissible.

Against interest.

SEC. 1052. DECLARATION OF DECEDENT EVIDENCE AGAINST HIS SUCCESSOR IN INTEREST.—The declaration, act, or omission of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is also admissible as evidence to that extent against his successor in interest.

When part of transaction proved, whole is admissible.

SEC. 1053. WHEN PART OF A TRANSACTION PROVED, THE WHOLE IS ADMISSIBLE.—When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing, which is necessary to make it understood, may also be given in evidence.

Proof of writing.

SEC. 1054. CONTENTS OF WRITING, HOW PROVED.—There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

"Best evidence available."

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.

2. When the original is in possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

3. When the original is a record or other document in the custody of a public officer.

4. When the original has been recorded, and a certified copy of the record is made evidence by this code or other statute.

5. When the original consists of numerous accounts or other documents, which can not be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

In the cases mentioned in subdivisions three and four, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions one and two, either a copy or oral evidence of the contents.

Lost public record or document.

SEC. 1055. PROOF OF CONTENTS OF LOST PUBLIC RECORD OR DOCUMENT; ABSTRACT OF TITLE MAY BE ADMITTED IN EVIDENCE.—When, in any action, it is desired to prove the contents of any public record or document lost or destroyed by conflagration or other public calamity and after proof of such loss or destruction, there is offered in proof of such contents (a) any abstract of title made and issued and certified as correct prior to such loss or destruction, and purporting to have been prepared and made in the ordinary course of business by any person, firm or corporation engaged in the business of preparing and making abstracts of title prior to such loss or destruction;

Abstract of title.

(b) any abstract of title, or of any instrument affecting title, made, issued and certified as correct by any person, firm, or corporation engaged in the business of insuring titles or issuing abstracts of title, to real estate whether the same was made, issued, or certified before or after such loss or destruction and whether the same was made from the original records or from abstracts and notes, or either, taken from such records in the preparation and upkeeping of its, or his, plant in the ordinary course of its business, the same may, without further proof, be admitted in evidence for the purpose aforesaid.

Proof of loss.

No proof of the loss of the original document or instrument shall be required other than the fact that the same is not known to the party desiring to prove its contents to be in existence: *Provided, nevertheless*, That any party so desiring to use said evidence shall give reasonable notice in writing to all other parties to the action who have appeared therein, of his intention to use the same at the trial of said action, and shall give all such other parties a reasonable opportunity to inspect the same, and also the abstracts, memoranda, or notes from which it was compiled, and to take copies thereof.

Proviso. Notice to adverse party.

Written instrument incontrovertible by parole.

SEC. 1056. AN AGREEMENT REDUCED TO WRITING DEEMED THE WHOLE.—When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

Exceptions.

1. Where a mistake or imperfection of the writing is put in issue by the pleadings;

2. Where the validity of the agreement is the fact in dispute.

Attendant circumstances, ambiguity, etc.

But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in section 1060, or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

Construction of language.

SEC. 1057. CONSTRUCTION OF LANGUAGE RELATES TO PLACE WHERE USED.—The language of a writing is to be interpreted according to the meaning it bears in the place of its execution, unless the parties have reference to a different place.

Of statutes and instruments.

SEC. 1058.—CONSTRUCTION OF STATUTES AND INSTRUMENTS, GENERAL RULE.—In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Intention of legislature or parties to govern.

SEC. 1059. THE INTENTION OF THE LEGISLATURE OR PARTIES.—In the construction of a statute the intention of the legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Attendant circumstances.

SEC. 1060. THE CIRCUMSTANCES TO BE CONSIDERED.—For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument, and of the parties to it, may also be shown, so that the judge be placed in the position of those whose language he is to interpret.

Terms to be construed generally.

SEC. 1061. TERMS TO BE CONSTRUED IN THEIR GENERAL ACCEPTATION.—The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless

admissible that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly. Technical, etc., words.

SEC. 1062. WRITTEN WORDS CONTROL THOSE PRINTED IN A BLANK FORM.—When an instrument consists partly of written words and partly of a printed form, and the two are inconsistent, the former controls the latter. Written words to govern print.

SEC. 1063. PERSONS SKILLED MAY TESTIFY, TO DECIPHER CHARACTERS.—When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language. Translators, etc.

SEC. 1064. OF TWO CONSTRUCTIONS, WHICH PREFERRED.—When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is most favorable to the party in whose favor the provision was made. Preference in construction.

SEC. 1065. A WRITTEN INSTRUMENT CONSTRUED AS UNDERSTOOD BY PARTIES.—A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus a notice to the drawers or indorsers of a bill of exchange or promissory note, that it has been protested for want of acceptance or payment, must be held to import that the same has been duly presented for acceptance or payment and the same refused, and that the holder looks for payment to the person to whom the notice is given. As understood by parties.

SEC. 1066. CONSTRUCTION IN FAVOR OF NATURAL RIGHT PREFERRED.—When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted. In favor of natural right.

SEC. 1067. MATERIAL ALLEGATION ONLY TO BE PROVED.—None but a material allegation need be proved. Material allegation, only, to be proved.

SEC. 1068. EVIDENCE CONFINED TO MATERIAL ALLEGATION.—Evidence must correspond with the substance of the material allegations and be relevant to the question in dispute. Collateral questions must therefore be avoided. It is, however, within the discretion of the court to permit inquiry into collateral fact, when such fact is directly connected with the question in dispute, and is essential to its proper determination or when it affects the credibility of a witness. Evidence confined to.

SEC. 1069. AFFIRMATIVE ONLY TO BE PROVED.—Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party. Affirmative allegations.

SEC. 1070. FACTS WHICH MAY BE PROVED ON TRIAL.—In conformity with the preceding provisions, evidence may be given upon a trial of the following facts: Facts provable on trial.

1. The precise fact in dispute; Fact in dispute.

2. The act, declaration, or omission of a party, as evidence against such party; Admissions against interest.

3. An act or declaration of another, in the presence and within the observation of a party, and his conduct in relation thereto; Acts of another in presence, etc., of party.

Dying declarations, etc.

4. The act or declaration, verbal or written, of a deceased person in respect to the relationship, birth, marriage, or death of any person related by blood or marriage to such deceased person; the act or declaration of a deceased person done or made against his interest in respect to his real property; and also in criminal actions, the act or declaration of a dying person, made under a sense of impending death, respecting the cause of his death;

Acts, etc., of partner, etc.

5. After proof of a partnership or agency, the act or declaration of a partner or agent of the party, within the scope of the partnership or agency, and during its existence. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party;

Conspiracies.

6. After proof of a conspiracy, the act or declaration of a conspirator against his co-conspirator, and relating to the conspiracy;

Acts, etc., forming part of transaction.
Ante, p. 1095.

7. The act, declaration, or omission forming part of a transaction as explained in section 1049;

Testimony of deceased, etc., persons.

8. The testimony of a witness deceased, or out of the jurisdiction, or unable to testify, given in a former action between the same parties, relating to the same matter;

Expert testimony.

9. The opinion of a witness respecting the identity or handwriting of a person, when he has knowledge of the person or handwriting; his opinion on a question of science, art, or trade, when he is skilled therein;

Opinion, as to sanity.

10. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental sanity of the signer; and the opinion of an intimate acquaintance respecting the mental sanity of a person, the reason for the opinion being given;

Ancient documents, etc.

11. Common reputation existing previous to the controversy, respecting facts of a public or general interest more than thirty years old, and in cases of pedigree and boundary;

Usage.

12. Usage, to explain the true character of an act, contract, or instrument, where such true character is not otherwise plain; but usage is never admissible, except as an instrument of interpretation;

Monuments, inscriptions, family records, etc.

13. Monuments and inscriptions in public places, as evidence of common reputation; and entries in family Bibles, or other family books or charts; engravings on rings, family portraits, and the like, as evidence of pedigree;

Parole, of writing, when admissible.

14. The contents of a writing, when oral evidence thereof is admissible;

Indirect.

15. Any other facts from which the facts in issue are presumed or are logically inferable;

Common reputation.
Ante, p. 1094.

16. Such facts as serve to show the credibility of a witness, as explained in section 1046.

Kinds and degrees.

KINDS AND DEGREES OF EVIDENCE

Knowledge of the court.

KNOWLEDGE OF THE COURT

Judicial notice.

SEC. 1071. CERTAIN FACTS OF GENERAL NOTORIETY ASSUMED TO BE TRUE; SPECIFICATION OF SUCH FACTS.—Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of all legal expressions;

2. Whatever is established by law;

3. Public and private official acts of the legislative, executive, and judicial departments of the United States;

4. The seals of all the courts of the Canal Zone and of the United States;

5. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive, and judicial departments of the United States;

6. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States;

7. The seals of courts of admiralty and maritime jurisdiction, and of notaries public;

8. The laws of nature, the measure of time, and the geographical divisions and political history of the world.

In all these cases the court may resort for its aid to appropriate books or documents of reference.

Witnesses.

WITNESSES

Defined.

SEC. 1072. WITNESSES DEFINED.—A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination, or by deposition or affidavit.

Capacity.

SEC. 1073. ALL PERSONS CAPABLE OF PERCEPTION AND COMMUNICATION MAY BE WITNESSES.—All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although, in every case the credibility of the witness may be drawn in question, as provided in section 1046.

Ante, p. 1094.

Persons who can not testify.

SEC. 1074. PERSONS WHO CAN NOT TESTIFY.—The following persons can not be witnesses:

1. Those who are of unsound mind at the time of their production for examination.

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator upon a claim, or demand against the estate of a deceased person, as to any matter or fact occurring before the death of such deceased person.

Who may not be examined.

SEC. 1075. CASES IN WHICH WITNESSES MAY NOT BE EXAMINED.—There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person can not be examined as a witness in the following cases:

Husband and wife.

1. HUSBAND AND WIFE.—A husband can not be examined for or against his wife without her consent; nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other; or in an action brought by husband or wife against another person for the alienation of the affections of either husband or wife or in an action for damages against another person for adultery committed by either husband or wife.

Exceptions.

Attorney and client.

2. ATTORNEY AND CLIENT.—An attorney can not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of profes-

sional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity.

Confessor and confessant.

3. CONFESSOR AND CONFESSANT.—A clergyman or priest can not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

Physician and patient.

4. PHYSICIAN AND PATIENT.—A licensed physician or surgeon can not, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient: *Provided, however*, That after the death of the patient, the executor of his will, or the administrator of his estate, or the surviving spouse of the deceased, or, if there be no surviving spouse, the children, of the deceased personally, or, if minors, by their guardian, may give such consent, in any action or proceeding brought to recover damages on account of the death of the patient: *Provided further*, That where any person brings an action to recover damages for personal injuries, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said person and whose testimony is material in said action shall testify: *And provided further*, That the bringing of an action to recover for the death of a patient, by the executor of his will, or by the administrator of his estate, or by the surviving spouse of the deceased, or if there be no surviving spouse, by the children personally, or, if minors, by their guardian, shall constitute a consent by such executor, administrator, surviving spouse, or children or guardian, to the testimony of any physician who attended said deceased.

Provisos.
Concerning injury causing death of patient, upon consent of representative of estate.

When injured party brings action thereon.

Action by representative for death.

Public officer.

5. PUBLIC OFFICER.—A public officer can not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

Judge and jurors eligible as.

SEC. 1076. JUDGE OR A JUROR MAY BE A WITNESS.—The judge himself, or any juror, may be called as a witness by either party; but in such case it is in the discretion of the court or judge to order the trial to be postponed or suspended, and to take place before another judge or jury.

Interpreter.

SEC. 1077. WHEN AN INTERPRETER TO BE SWORN.—When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person, a resident of the proper division or subdivision, may be summoned by any court or judge to appear before such court or judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpœna. Any person so summoned who fails to attend at the time and place named in the summons, is guilty of a contempt.

Writings.

WRITINGS IN GENERAL

Public and private.

SEC. 1078. WRITINGS, PUBLIC AND PRIVATE.—Writings are of two kinds:

1. Public; and,
2. Private.

"Public" defined.

SEC. 1079. PUBLIC WRITINGS DEFINED.—Public writings are:

1. The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative,

judicial, and executive, whether of the Canal Zone, of the United States, of a State of the United States, or of a foreign country;

2. Public records, kept in the Canal Zone, of private writings.

SEC. 1080. ALL OTHERS PRIVATE.—All other writings are private. "Private."

PUBLIC WRITINGS

Public writings.

SEC. 1082. PUBLIC OFFICERS BOUND TO GIVE COPIES.—Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. Officers bound to give copies.

SEC. 1083. FOUR KINDS OF PUBLIC WRITINGS.—Public writings are divided into four classes: Divisions.

1. Laws;
2. Judicial records;
3. Other official documents;
4. Public records, kept in the Canal Zone, of private writings. Definitions.

SEC. 1084. WRITTEN LAWS DEFINED.—A written law is that which is promulgated in writing, and of which a record is in existence. "Written laws."

SEC. 1085. PUBLIC AND PRIVATE STATUTES DEFINED.—Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations. "Public and private statutes."

SEC. 1086. UNWRITTEN LAW DEFINED.—Unwritten law is the law not promulgated and recorded, as mentioned in section 1084, but which is, nevertheless, observed and administered in the courts of the United States. It has no certain repository, but is collected from the reports of the decisions of the courts, and the treatises of learned men. "Unwritten law."

SEC. 1087. BOOKS CONTAINING LAWS PRESUMED TO BE CORRECT.—Books printed or published under the authority of a state or foreign country, and purporting to contain the statutes, code, or other written law of such state or country, or proved to be commonly admitted in the tribunals of such state or country as evidence of the written law thereof, are admissible in the Canal Zone as evidence of such law. Books containing laws presumed correct.

SEC. 1088. EVIDENCE OF FOREIGN LAW.—A copy of the written law or other public writing of any state or country, attested by the certificate of the officer having charge of the original, under the public seal of the state or country, is admissible as evidence of such law or writing. Foreign laws, copies.

SEC. 1089. OTHER EVIDENCE OF LAWS OF STATES.—The oral testimony of witnesses skilled therein is admissible as evidence of the unwritten law of a state or foreign country, as are also printed and published books of reports of decisions of the courts of such state or country, or proved to be commonly admitted in such courts. Oral testimony by experts.

SEC. 1090. RECITALS IN STATUTES, HOW FAR EVIDENCE.—The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further. Recitals in statutes.

SEC. 1091. JUDICIAL RECORD DEFINED.—A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding. "Judicial record" defined.

SEC. 1092. RECORD, HOW AUTHENTICATED AS EVIDENCE.—A judicial record of the Canal Zone, or of the United States, may be proved Authentication of.

by the production of the original, or by a copy thereof, certified by the clerk or other person having a legal custody thereof. That of a state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

Authentication of foreign judicial record.

SEC. 1093. RECORD OF A FOREIGN COUNTRY, HOW AUTHENTICATED.—A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and a seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge, or presiding magistrate, that the person making the attestation is the clerk of the court or the legal keeper of the record, and, in either case, that the signature of such person is genuine, and that the attestation is in due form. The signature of the chief judge or presiding magistrate must be authenticated by the certificate of the minister or ambassador, or a consul, vice consul, or consular agent of the United States in such foreign country.

Unauthenticated copy.

SEC. 1094. COPY OF A FOREIGN RECORD, WHEN EVIDENCE.—A copy of the judicial record of a foreign country is also admissible in evidence, upon proof:

1. That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;

2. That such original was in the custody of the clerk of the court or other legal keeper of the same; and

3. That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it be the record of a court; or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

Effect of judgment upon rights.

SEC. 1095. EFFECT OF A JUDGMENT UPON RIGHTS IN VARIOUS CASES.—The effect of a judgment or final order in an action or special proceeding before a court or judge of the Canal Zone, is as follows:

1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administration, or the condition or relation of the person.

2. In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

Other judicial orders.

SEC. 1096. EFFECT OF OTHER JUDICIAL ORDERS, WHEN CONCLUSIVE.—Other judicial orders of a court or judge of the Canal Zone, create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

Where parties deemed the same.

SEC. 1097. WHERE PARTIES ARE TO BE DEEMED THE SAME.—The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides in the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

What deemed adjudged in judgment.

SEC. 1098. WHAT DEEMED ADJUDGED IN A JUDGMENT.—That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Principal bound when sureties are.

SEC. 1099. WHERE SURETIES BOUND, PRINCIPAL IS ALSO.—Whenever, pursuant to the last four sections, a party is bound by a record, and such party stands in the relation of a surety for another, the latter is also bound from the time that he has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense.

Effect of judicial record of State.

SEC. 1100. RECORD OF STATE, ITS EFFECT.—The effect of a judicial record of a state is the same in the Canal Zone as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority.

Court of admiralty.

SEC. 1101. RECORD OF A COURT OF ADMIRALTY.—The effect of the judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the United States.

Foreign judgment.

SEC. 1102. EFFECT OF A FOREIGN JUDGMENT.—A final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered, and also the same effect as final judgments rendered in the Canal Zone.

Impeachment of record.

SEC. 1103. MANNER OF IMPEACHING A RECORD.—Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.

Jurisdiction necessary to sustain a judgment.

SEC. 1104. THE JURISDICTION NECESSARY IN A JUDGMENT.—The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

Proof of other official documents.

SEC. 1105. MANNER OF PROVING OTHER OFFICIAL DOCUMENTS.—Other official documents may be proved, as follows:

Acts of executives of Canal Zone and United States.

1. Acts of the executive of the Canal Zone, by the records of his office; and of the United States, by the records of the state department of the United States, certified by the heads of those departments, respectively. They may also be proved by public documents printed by order of the executive or Congress, or either house thereof.

Proceedings of Congress.

2. The proceedings of Congress, by the journals of that body, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk or printed by their order.

Executive and legislature of States.

3. The acts of the executive, or the proceedings of the legislature of a state, in the same manner.

Of foreign country.

4. The acts of the executive, or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public act of the executive of the United States.

Other documents, Canal Zone.

5. Documents of any other class in the Canal Zone, by the original, or by a copy, certified by the legal keeper thereof.

States.

6. Documents of any other class in a State, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the secretary of state, judge of the supreme, superior, or county court, or mayor of a city of such State, that the copy is duly certified by the officer having the legal custody of the original.

Foreign country.

7. Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate, under seal, of the country or sovereign, that the document is a valid and subsisting document of such country, and the copy is duly certified by the officer having the legal custody of the original.

Departments, United States Government.

8. Documents in the departments of the United States Government, by the certificates of the legal custodian thereof.

Public record of private writing.

SEC. 1106. PUBLIC RECORD OF PRIVATE WRITING EVIDENCE.—A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

Entries in official books, prima facie evidence.

SEC. 1107. ENTRIES IN OFFICIAL BOOKS PRIMA FACIE EVIDENCE.—Entries in public or other official books or records made in the performance of his duty by a public officer of the Canal Zone, or by another person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts stated therein.

Judgments of State justices.

SEC. 1108. JUSTICE'S JUDGMENT IN STATES, HOW PROVED.—A transcript from the record or docket of a justice of the peace of a State, of a judgment rendered by him, of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the justice and verified in the manner prescribed in the next section is admissible evidence of the facts stated therein.

Additional certifications.

SEC. 1109. SAME.—There must be attached to the transcript a certificate of the justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk or prothonotary of the county in which the justice resided at the time of rendering the judgment, under the seal of the county, or the seal of the court of common pleas or county court thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a justice of the peace in the county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

Other official certificates.

SEC. 1110. CONTENTS OF OTHER OFFICIAL CERTIFICATES.—Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

Provisions with respect to States to apply to United States and Territories.

SEC. 1111. PROVISIONS IN RELATION TO PUBLIC WRITINGS OF STATES APPLY TO THOSE OF UNITED STATES OR TERRITORIES.—The provisions of the preceding sections of this subchapter applicable to the public writings of a state, are equally applicable to the public writings of the United States or a Territory of the United States.

Entries of officers of boards prima facie evidence.

SEC. 1112. ENTRIES MADE BY OFFICERS OR BOARDS PRIMA FACIE EVIDENCE.—An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is prima facie evidence of the facts stated in such entry.

Deed as evidence of transfer.

SEC. 1113. DEED EVIDENCE OF TRANSFER.—A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of the district court, or the record of such deed, or a certified copy of such record is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in such deed.

PRIVATE WRITINGS

Private writings.

Classified.

SEC. 1114. PRIVATE WRITINGS CLASSIFIED.—Private writings are either:

1. Sealed; or,
2. Unsealed.

"Seal" defined.

SEC. 1115. SEAL DEFINED.—A seal is a particular sign made to attest, in the most formal manner, the execution of an instrument.

How made.

SEC. 1116. SEAL, WHAT IS, AND HOW MADE.—A public seal in the Canal Zone is a stamp or impression made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper, or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign, made in a state or foreign country, and there recognized as a seal, must be so regarded in the Canal Zone.

Effect.

SEC. 1117. EFFECT OF A SEAL.—There shall be no difference hereafter, in the Canal Zone, between sealed and unsealed writings. A writing under seal may therefore be changed, or altogether discharged by a writing not under seal.

"Execution of instrument" defined.

SEC. 1118. EXECUTION OF AN INSTRUMENT DEFINED.—The execution of an instrument is the subscribing and delivering it, with or without affixing a seal.

Compromise of debt without seal good.

SEC. 1119. COMPROMISE OF A DEBT WITHOUT SEAL GOOD.—An agreement, in writing, without a seal, for the compromise or settlement of a debt, is as obligatory as if a seal were affixed.

"Subscribing witness."

SEC. 1120. SUBSCRIBING WITNESS DEFINED.—A subscribing witness is one who sees a writing executed or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.

Evidentiary value of books, maps, etc.

SEC. 1121. BOOKS, MAPS, AND SO FORTH, HOW FAR EVIDENCE.—Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest.

Production of original writing. Exceptions. *Ante*, pp. 1095, 1104.

SEC. 1122. ORIGINAL WRITING TO BE PRODUCED OR ACCOUNTED FOR.—The original writing must be produced and proved, except as provided in sections 1054 and 1106. If it has been lost, proof of the loss must first be made before evidence can be given of its contents. Upon such proof being made, together with proof of the due execution of the writing, its contents may be proved by a copy, or by recital of its contents in some authentic document, or by the recollection of a witness, as provided in section 1054.

Writing in hands of adverse party, notice to produce.

SEC. 1123. WHEN IN POSSESSION OF ADVERSE PARTY, NOTICE TO BE GIVEN.—If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

May be withheld.

SEC. 1124. WRITINGS CALLED FOR AND INSPECTED MAY BE WITHHELD.—Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

Proof of writing.

SEC. 1125. WRITING, HOW PROVED.—Any writing may be proved either:

1. By anyone who saw the writing executed; or,
2. By evidence of the genuineness of the handwriting of the maker; or,

3. By a subscribing witness.

Further proof of.

SEC. 1126. OTHER WITNESSES MAY ALSO TESTIFY.—If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

When evidence of execution not necessary.

SEC. 1127. WHEN EVIDENCE OF EXECUTION NOT NECESSARY.—Where, however, evidence is given that the party against whom the writing is offered has at any time admitted its execution no other evidence of the execution need be given, when the instrument is one mentioned in section 1130, or one produced from the custody of the adverse party, and has been acted upon by him as genuine.

Proof of handwriting, by party familiar.

SEC. 1128. EVIDENCE OF HANDWRITING.—The handwriting of a person may proved[1] by any one who believes it to be his, and who has seen him write, or has seen writings purporting to be his, upon which he has acted or been charged, and who has thus acquired a knowledge of his handwriting.

By comparison.

SEC. 1129. EVIDENCE OF HANDWRITING BY COMPARISON.—Evidence respecting the handwriting may also be given by a comparison, made by the witness or the jury, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

Ancient writings.

SEC. 1130. SAME; WHEN WRITING MORE THAN THIRTY YEARS OLD.—Where a writing is more than thirty years old, the comparisons may be made with writings purporting to be genuine, and generally respected and acted upon as such, by persons having an interest in knowing the fact.

Entries of decedents.

SEC. 1131. ENTRIES OF DECEDENTS; EVIDENCE IN SPECIFIED CASES.—The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as prima facie evidence of the facts stated therein, in the following cases:

Against interest.

1. When the entry was made against the interest of the person making it.

Professional capacity.

2. When it was made in a professional capacity and in the ordinary course of professional conduct.

In performance of legal duty.

3. When it was made in the performance of a duty specially enjoined by law.

Copies of entries.

SEC. 1132. COPIES OF ENTRIES ALSO ALLOWED.—When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as originals.

Proof of private writings.

SEC. 1133. PRIVATE WRITINGS, HOW PROVED.—Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided in chapter 22 of the Civil Code, and the certificate of such acknowledgement or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Post, p. 1164.

Removal of public records.

SEC. 1134. REMOVAL OF PUBLIC RECORDS.—The record of a conveyance of real property, or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court, in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending, or where the court is held in the same building with such office.

Instruments conveying real property admissible.

SEC. 1135. INSTRUMENT CONVEYING OR AFFECTING REAL PROPERTY MAY BE READ IN EVIDENCE.—Every instrument conveying or affecting real property, acknowledged or proved and certified, as provided in the Civil Code, may together with the certificate of acknowledg-

[1] So in original.

ment or proof, be read in evidence in an action or proceeding, without further proof; also, the original record of such conveyance or instrument thus acknowledged or proved, or a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may be read in evidence, with the like effect as the original instrument, without further proof.

MATERIAL OBJECTS PRESENTED TO THE SENSES OTHER THAN WRITINGS

Material objects other than writing.

Admissible.

SEC. 1136. MATERIAL OBJECTS.—Whenever an object, cognizable by the senses, has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, or to make an item in the sum of the evidence, such object may be exhibited to the jury, or its existence, situation, and character may be proved by witnesses. The admission of such evidence must be regulated by the sound discretion of the court.

INDIRECT EVIDENCE; INFERENCES AND PRESUMPTIONS

Indirect evidence; inferences and presumptions.

Indirect evidence classified.

SEC. 1137. INDIRECT EVIDENCE CLASSIFIED.—Indirect evidence is of two kinds:

1. Inferences; and,

2. Presumptions.

SEC. 1138. INFERENCE DEFINED.—An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction of law to that effect.

SEC. 1139. PRESUMPTION DEFINED.—A presumption is a deduction which the law expressly directs to be made from particular facts.

SEC. 1140. WHEN AN INFERENCE ARISES.—An inference must be founded:

1. On a fact legally proved; and,

2. On such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.

Presumption may be controverted, when.

SEC. 1141. PRESUMPTIONS MAY BE CONTROVERTED, WHEN.—A presumption (unless declared by law to be conclusive) may be controverted by other evidence, direct or indirect; but unless so controverted the jury are bound to find according to the presumption.

Conclusive presumptions.

SEC. 1142. SPECIFICATION OF CONCLUSIVE PRESUMPTIONS.—The following presumptions, and no others, are deemed conclusive:

1. A malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another;

2. The truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration;

3. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it;

4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

5. The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate;

6. The judgment or order of a court, when declared by this code to be conclusive; but such judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence;

7. Any other presumption which, by statute, is expressly made conclusive.

Controvertible presumptions.

SEC. 1143. ALL OTHER PRESUMPTIONS MAY BE CONTROVERTED.—All other presumptions are satisfactory, if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

1. That a person is innocent of crime or wrong;

2. That an unlawful act was done with an unlawful intent;

3. That a person intends the ordinary consequence of his voluntary act;

4. That a person takes ordinary care of his own concerns;

5. That evidence willfully suppressed would be adverse if produced;

6. That higher evidence would be adverse from inferior being produced;

7. That money paid by one to another was due to the latter;

8. That a thing delivered by one to another belonged to the latter;

9. That an obligation delivered up to the debtor has been paid;

10. That former rent or installments have been paid when a receipt for latter is produced;

11. That things which a person possesses are owned by him;

12. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;

13. That a person in possession of an order on himself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly;

14. That a person acting in a public office was regularly appointed to it;

15. That official duty has been regularly performed;

16. That a court or judge, acting as such, whether in the Canal Zone or any state or country, was acting in the lawful exercise of his jurisdiction;

17. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties;

18. That all matters within an issue were laid before the jury and passed upon by them;

19. That private transactions have been fair and regular;

20. That the ordinary course of business has been followed;

21. That a promissory note or bill of exchange was given or indorsed for a sufficient consideration;

22. That an indorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill;

23. That a writing is truly dated;

24. That a letter duly directed and mailed was received in the regular course of the mail;

25. Identity of person from identity of name;

26. That a person not heard from in seven years is dead;

27. That acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact;

28. That things have happened according to the ordinary course of nature and ordinary habits of life;

29. That persons acting as copartners have entered into a contract of copartnership;

30. That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;

31. That a child born in lawful wedlock is legitimate;

Controvertible presumptions—Contd.

32. That a thing once proved to exist continues as long as is usual with things of that nature;

33. That the law has been obeyed;

34. That a document or writing more than thirty years old is genuine, when the same has been since generally acted upon as genuine, by persons having an interest in the question, and its custody has been satisfactorily explained;

35. That a printed and published book, purporting to be printed or published by public authority, was so printed or published;

36. That a printed and published book, purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published, contains correct reports of such cases;

37. That a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him when such presumption is necessary to perfect the title of such person or his successor in interest;

38. That there was a good and sufficient consideration for a written contract;

39. When two persons perish in the same calamity, such as a wreck, a battle, or a conflagration, and it is not shown who died first, and there are no particular circumstances from which it can be inferred, survivorship is presumed from the probabilities resulting from the strength, age, and sex, according to the following rules:

First. If both of those who have perished were under the age of fifteen years, the older is presumed to have survived;

Second. If both were above the age of sixty, the younger is presumed to have survived;

Third. If one be under fifteen and the other above sixty, the former is presumed to have survived;

Fourth. If both be over fifteen and under sixty, and the sexes be different, the male is presumed to have survived; if the sexes be the same, then the older;

Fifth. If one be under fifteen, or over sixty, and the other between those ages, the latter is presumed to have survived.

Indispensable evidence.

INDISPENSABLE EVIDENCE

What is.

SEC. 1144. INDISPENSABLE EVIDENCE, WHAT.—The law makes certain evidence necessary to the validity of particular acts, or the proof of particular facts.

For perjury and treason.

SEC. 1145. TO PROVE PERJURY AND TREASON, MORE THAN ONE WITNESS REQUIRED.—Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

For will.

SEC. 1146. WILL TO BE IN WRITING.—A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

For revocation of will. *Post*, p. 1167.

SEC. 1147. WILL, HOW REVOKED.—A written will can not be revoked or altered otherwise than as provided in the Civil Code.

Transfer of real property.

SEC. 1148. TRANSFER OF REAL PROPERTY TO BE IN WRITING.—No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by

the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Not to extend to testamentary disposition or trusts.

SEC. 1149. LAST SECTION NOT TO EXTEND TO CERTAIN CASES.—The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

Agreements not in writing.

SEC. 1150. AGREEMENT NOT IN WRITING, WHEN INVALID.—In the following cases the agreement is invalid, unless the same or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement, can not be received without the writing or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 1265 of the Civil Code;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. A contract to sell or a sale of any goods or choses in action of the value of $50 or upwards, unless the buyer accepts part of the goods or choses in action so contracted to be sold or sold, and actually receives the same, or gives something in earnest to bind the contract, or in part payment;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will.

Representation of credit.

SEC. 1151. REPRESENTATION OF CREDIT BY WRITING.—No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be charged.

Conclusive evidence.

CONCLUSIVE OR UNANSWERABLE EVIDENCE

When declared so herein.

SEC. 1152. CONCLUSIVE OR UNANSWERABLE EVIDENCE.—No evidence is by law made conclusive or unanswerable, unless so declared by this code.

Production of evidence.

PRODUCTION OF EVIDENCE

By whom.

BY WHOM TO BE PRODUCED

Party holding affirmative of issue.

SEC. 1153. EVIDENCE TO BE PRODUCED BY WHOM.—The party holding the affirmative of the issue must produce the evidence to prove it; therefore, the burden of proof lies on the party who would be defeated if no evidence were given on either side.

Alteration in writing.

SEC. 1154. WRITING ALTERED, WHO TO EXPLAIN.—The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, must account for the appearance or alteration. He

may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do that, he may give the writing in evidence, but not otherwise.

MEANS OF PRODUCTION

Means of production.

Subpœna.

SEC. 1155. SUBPŒNA FOR WITNESS DEFINED.—The process by which the attendance of a witness is required is a subpœna. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpœna duces tecum.

Purpose.

SEC. 1156. SUBPŒNA, HOW ISSUED.—A subpœna is issued as follows:

For attendance before a court.

1. To require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein, it is issued by the clerk of the court in which the action or proceeding is pending, under the seal of the court, or if there is no clerk or seal then by the judge or magistrate of such court;

Before commissioner.

2. To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any State in the United States, before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by the clerk of the district court in the division in which the witness is to be examined, under the seal of such court;

Before judge, etc., out of court.

3. To require attendance out of court, in cases not provided for in subdivision one, before a judge, magistrate, or other officer authorized to administer oaths or take testimony in any matter under the laws of the Canal Zone, it is issued by the judge, magistrate, or other officer before whom the attendance is required.

Issue of.

If the subpœna is issued to require attendance before a court, or at the trial of an issue therein, it is issued by the clerk, as of course, upon the application of the party desiring it. If it is issued to require attendance before a commissioner or other officer upon the taking of a deposition, it must be issued by the clerk of the district court in the division wherein the attendance is required upon the order of such court or of the judge thereof, which order may be made ex parte.

Service.

SEC. 1157. SUBPŒNA, HOW SERVED.—The service of a subpœna is made by showing the original and delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

When witness concealed.

SEC. 1158. HOW, IF WITNESS BE CONCEALED.—If a witness is concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any court, judge, or magistrate or any officer issuing the subpœna may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the marshal or constable serve the subpœna; and the marshal or constable must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

Persons present compelled to testify.

SEC. 1159. PERSON PRESENT COMPELLED TO TESTIFY.—A person present in court, or before a judicial officer, may be required to testify

in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Disobedience to subpœna, punishable as a contempt.

SEC. 1160. DISOBEDIENCE TO SUBPŒNA, HOW PUNISHED.—Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court issuing the subpœna. When the subpœna, in any such case, requires the attendance of the witness before an officer or commissioner out of court, it is the duty of such officer or commissioner to report any such disobedience or refusal to the court issuing the subpœna; and the witness must not be punished for any refusal to answer a question or to subscribe an affidavit or deposition, unless, after a hearing upon notice, the court orders him to so answer or subscribe and then only for disobedience to such order. Any judge, magistrate, or other officer mentioned in subdivision three of section 1156, may report any such disobedience or refusal to the district court for the division in which such attendance was required; and such court thereupon has power, upon notice, to order the witness to perform the omitted act, and any refusal or neglect to comply with such order may be punished as a contempt of such court.

When before officer or commissioner out of court.

Ante, p. 1111.

Forfeiture.

SEC. 1161. FORFEITURE THEREFOR.—A witness disobeying a subpœna also forfeits to the party aggrieved the sum of $100, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Warrant to bring witness.

SEC. 1162. WARRANT MAY ISSUE TO BRING WITNESS, WHEN.—In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the marshal or constable to arrest the witness and bring him before the court or officer where his attendance was required.

Contents.

Ante, p. 1111.

SEC. 1163. CONTENTS OF WARRANT.—Every warrant of commitment, issued by a court or officer pursuant to sections 1155 to 1165, must specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness, pursuant to said sections, must be executed in the same manner as process issued by the district court.

When witness a prisoner.

SEC. 1164. IF WITNESS BE A PRISONER, HOW BROUGHT.—If the witness be a prisoner, confined in a jail or prison within the Canal Zone, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be made as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a magistrate's court.

2. By the judge of the district court if the action or proceeding is pending before a magistrate's court, or before a judge or other person out of court.

Order for examination made on motion of party.

SEC. 1165. ON WHOSE MOTION.—Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

Taking of testimony.

MODE OF TAKING THE TESTIMONY OF WITNESSES

Methods of taking.

SEC. 1167. TESTIMONY, IN WHAT MODE TAKEN.—The testimony of witnesses is taken in three modes:

1. By affidavit;

2. By deposition;
3. By oral examination.

"Affidavit" defined.

SEC. 1168. AFFIDAVIT DEFINED.—An affidavit is a written declaration under oath, made without notice to the adverse party.

"Deposition."

SEC. 1169. DEPOSITION DEFINED.—A deposition is a written declaration, under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine. In all actions and proceedings where the default of the defendant has been duly entered, and in all proceedings to obtain letters of administration, or for the probate of wills and the issuance of letters testamentary thereon, where, after due and legal notice, those entitled to contest the application have failed to appear, the entry of said defaults, and the failure of said persons to appear after notice, shall be deemed to be a waiver of the right to any further notice of any application or proceeding to take testimony by deposition in such action or proceeding.

"Oral examination."

SEC. 1170. ORAL EXAMINATION DEFINED.—An oral examination is an examination in presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

Taking of deposition.

SEC. 1171. DEPOSITION DEFINED; HOW TAKEN.—Depositions must be taken in the form of question and answer. The words of the witness must be written down, in the presence of the witness, by the officer taking the deposition, or by some disinterested person appointed by him. It may be taken down in shorthand, in which case it must be transcribed into longhand by the person who took it down. When completed, it must be carefully read to or by the witness and corrected by him in any particular, if desired, by writing or causing his corrections to be written in the body or margin of or at the bottom of the deposition, and must then be subscribed by the witness. The officer before whom the deposition is taken must write his initials near said corrections. If the parties agree in writing to any other mode, the mode so agreed upon must be followed.

Affidavits.

AFFIDAVITS

Affidavits and depositions, purposes of.

SEC. 1172. AFFIDAVITS AND DEPOSITIONS; FOR WHAT PURPOSES USED.—An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by some other provision of this code.

As evidence of publication.

SEC. 1173. EVIDENCE OF PUBLICATION, WHAT.—Evidence of the publication of a document or notice required by law, or by an order of a court or judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when, and the paper in which, the publication was made.

Filing of.

SEC. 1174. FILING EVIDENCE OF PUBLICATION.—If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. The original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is prima facie evidence of the facts stated therein.

Before whom taken.

SEC. 1175. AFFIDAVITS TO BE USED IN THE CANAL ZONE, BEFORE WHOM MAY BE TAKEN.—An affidavit to be used before any court, judge, or officer of the Canal Zone may be taken before any officer authorized to administer oaths.

When outside of Canal Zone.

SEC. 1176. AFFIDAVIT OUT OF ZONE, HOW TAKEN.—An affidavit taken in a State of the United States, to be used in the Canal Zone, may be taken before a commissioner appointed by the Governor of the Panama Canal to take affidavits and depositions in such State, or before any notary public in a State, or before any judge or clerk of a court of record having a seal.

In foreign country.

SEC. 1177. IF MADE IN A FOREIGN COUNTRY, BEFORE WHOM TAKEN.—An affidavit taken in a foreign country to be used in the Canal Zone, may be taken before an ambassador, minister, consul, vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal in such foreign country.

Certificate of clerk, when taken outside Canal Zone.

SEC. 1178. CERTIFICATE OF THE CLERK, IF TAKEN BEFORE A JUDGE OF A COURT OUT OF THE ZONE.—When an affidavit is taken before a judge of a court in a state, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof, must be certified by the clerk of the court, under the seal thereof.

Depositions.

DEPOSITIONS IN GENERAL

When used.
Ante, p. 1113.

SEC. 1179. DEPOSITIONS, WHEN USED.—In all cases other than those mentioned in section 1172, where a written declaration under oath is used, it must be a deposition as prescribed by this code.

Taking of, outside Canal Zone.

SEC. 1180. TESTIMONY OF A WITNESS OUT OF THE ZONE, WHEN TAKEN.—The testimony of a witness out of the Canal Zone may be taken by deposition in the following cases:

1st. In an action, at any time after the service of summons, or the appearance of the defendant.

2d. In a special proceeding, any time after a question of fact has arisen therein.

3d. Where default has been made by any or all of the defendants.

Within Canal Zone.

SEC. 1181. DEPOSITIONS IN THE ZONE, WHEN TAKEN.—The testimony of a witness in the Canal Zone may be taken by deposition in an action at any time after the service of the summons or the appearance of the defendant, and in a special proceeding after a question of fact has arisen therein, in the following cases:

1. When the witness is a party to the action or proceeding or an officer or member of a corporation which is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

2. When the witness resides out of the subdivision in which his testimony is to be used;

3. When the witness is about to leave the subdivision where the action is to be tried, and will probably continue absent when the testimony is required;

4. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

5. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required;

6. When the witness is the only one who can establish facts or a fact material to the issue: *Provided*, That the deposition of such witness shall not be used if his presence can be procured at the time of the trial of the cause.

Proviso.
Invalid, if witness can be produced.

Reading of deposition in evidence.
Ante, p. 1112.
Exception.
Post, p. 1116.

SEC. 1182. DEPOSITION MAY BE READ IN EVIDENCE BY EITHER PARTY.—A deposition taken and returned, as provided in sections 1167 to 1190, may, except as provided in section 1192, be read in evidence by either party at any stage of the action or proceeding in which it was taken, or in any other action or proceeding between the same parties or their privies or successors in interest upon the same sub-

ject, and is then deemed the evidence of the party reading it; but the court may exclude the same, if it appears that the taking thereof was in any material respect unfair.

Court may order, if adverse party in default.

SEC. 1183. COURT MAY ORDER DEPOSITION IF ADVERSE PARTY IN DEFAULT.—If an adverse party is in default for not appearing and answering within the time allowed by law or the court, or if, in a special proceeding, some or all of the parties interested have not appeared, the court may authorize a deposition to be taken without the service of any affidavit upon, or the giving of any notice to, the party so in default or not appearing, or may provide that notice be given to him in such mode as to the court may seem proper.

Depositions outside Canal Zone.

MANNER OF TAKING DEPOSITIONS OUT OF THE CANAL ZONE

Manner of taking.

SEC. 1184. DEPOSITION OF WITNESSES OUT OF ZONE, HOW TAKEN.—The deposition of a witness out of the Canal Zone may be taken upon a commission issued from the court under the seal of the court, upon an order of the court, or the judge or a magistrate thereof, on the application of either party, upon five days' previous notice to the other. If the court is a magistrate's court, the commission must have attached to it a certificate of the clerk of the district court for the division in which such magistrate's court is held, under the seal of such district court, to the effect that the person issuing the same was an acting magistrate at the date of the commission. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any notary public, judge or justice of the peace or commissioner selected by the court or judge or justice issuing it. If issued to any country out of the United States, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States, or judge of a court of record in such country, or to any person agreed upon by the parties.

In United States.

In foreign country.

Interrogatories.

SEC. 1185. PROPER INTERROGATORIES MAY BE PREPARED, OR MAY BE WAIVED BY THE PARTIES.—The party moving for the commission must, unless it is waived by the other party, attach to the notice of the motion the interrogatories upon which he desires it to be taken. On the hearing of the motion, the other party must propose such cross-interrogatories as he may desire. If the parties do not agree as to the form of the interrogatories, the court must settle their form, but such agreement or settlement does not preclude either party, when the deposition is offered in evidence, from interposing any objection to any interrogatory except as to the form thereof. The settlement of interrogatories may be had at the time of the hearing of the motion, or at any other time which the court may appoint; but the moving party must, if he request it, be allowed two days within which to propose such redirect interrogatories as the cross-interrogatories proposed render proper. When agreed upon or settled, the interrogatories must be annexed to the commission; or, when the parties agree to that mode, or the court on the application of either party, after a hearing had upon two days' notice to the opposite party, so directs, the examination must be without written interrogatories.

Oral interrogatories.

SEC. 1186. DEPOSITION OF NONRESIDENT WITNESS UPON ORAL INTERROGATORIES.—When a party shall desire to take the evidence of a nonresident witness, to be used in any cause pending in the Canal Zone, the party desiring the same (or where notice shall have been given that a commission to take the testimony of a nonresident witness will be applied for, the opposite party, upon giving the other three days' notice in writing of his election so to do), may have a commission

Ante, p. 1115.

directed in the same manner as provided in section 1184, to take such evidence, upon interrogatories to be propounded to the witness orally; upon the taking of which each party may appear before the commission, in person or by attorney, and interrogate the witness.

Notice to adverse party.

The party desiring such testimony shall give to the other the following notice of the time and place of taking the same, to wit: Ten days, and one day in addition thereto (Sundays included) for every three hundred miles' travel from the place of holding the court to the place where such deposition is to be taken.

Fees and mileage.

FEES AND MILEAGE.—When a party to a suit shall give the opposite party notice to take a deposition upon oral interrogatories, and shall fail to take the same accordingly, unless such failure be on account of the nonattendance of the witness, not occasioned by the fault of the party giving the notice, or some other unavoidable cause, the party notified, if he shall attend himself or by attorney, agreeably to the notice, shall be entitled to $2 per day for each day he may attend under such notice, and to 6 cents per mile for every mile that he shall necessarily travel in going to and returning from the place designated to take the deposition, to be allowed by the court where the suit is pending and for which execution may issue.

Authority of commissioner.

SEC. 1187. AUTHORITY OF COMMISSIONER.—The commission must authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope, directed to the clerk, if there be one, and if not, to the judge thereof, and forward to him by mail or other usual channel of conveyance.

Postponement of trial for nonreturn of commission.

SEC. 1188. TRIAL, WHEN POSTPONED FOR REASON OF NONRETURN OF COMMISSION.—A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Use by either party.
Ante, p. 1115.

SEC. 1189. DEPOSITION, BY WHOM USED.—The deposition mentioned in sections 1184 to 1190 may be used by either party on the trial or other proceeding, against any other party giving or receiving the notice, subject to all just exceptions.

Notice dispensed with.

SEC. 1190. NOTICE DISPENSED WITH WHEN WITNESS RESIDES OUT OF ZONE.—In all cases where service of summons has been had by publication as provided by law and after default has been duly entered, and it appears by affidavit that the residence of a party to the action is unknown and the witness resides out of the Canal Zone, then in such cases the notice provided for in sections 1184 to 1190 shall be dispensed with.

Ante, p. 1115.

Depositions in Canal Zone.

MANNER OF TAKING DEPOSITIONS IN THE CANAL ZONE

Before judge, magistrate, etc.

SEC. 1191. DEPOSITIONS MAY BE TAKEN BEFORE A JUDGE, AND SO FORTH, UPON NOTICE TO THE ADVERSE PARTY.—Either party may have the deposition taken of a witness in the Canal Zone, in either of the cases mentioned in section 1181, before a judge, magistrate, or other officer authorized to administer oaths, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, unless, for a cause shown, a judge, by order, prescribe a shorter time. When a shorter time is prescribed, a copy of the order must be served with the notice.

Ante, p. 1114.
Notice.

Manner of taking.

SEC. 1192. MANNER OF TAKING DEPOSITIONS; MAY BE USED BY EITHER PARTY ON THE TRIAL.—Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to or by the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed, and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under subdivisions two, three, and four, of section 1181, proof must be made at the trial that the witness continues absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

Use by either party on the trial.

Ante, p. 1114.

For use in States.

SEC. 1193. DEPOSITION IN THE ZONE TO BE USED IN STATES.—Any party to an action or special proceeding in a court or before a judge of a state, may obtain the testimony of a witness residing in the Canal Zone, to be used in such action or proceeding, in the cases mentioned in the next two sections.

Procuring witness upon commission.

SEC. 1194. HOW TO PROCURE WITNESS UPON COMMISSION.—If a commission to take such testimony has been issued by the court before which such action or proceeding is pending, or by a judge thereof, on exhibiting the commission to the division of the district court in which the witness resides, with an affidavit showing the materiality of his testimony, such court may issue a subpœna to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place within such division.

Subpœna.

Compelling witness to appear and testify.

SEC. 1195. COMPELLING THE WITNESSES TO APPEAR AND TESTIFY.—Whenever any mandate, writ, or commission is issued out of any court of record in any State, Territory, District, or foreign jurisdiction, or whenever, upon notice or agreement, it is required to take the testimony of a witness or witnesses in the Canal Zone, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in the Canal Zone.

Procedure when no commission has issued.

SEC. 1196. HOW, IF COMMISSION NOT ISSUED.—If a commission has not been issued, and it appears to the district judge, or to a magistrate, by affidavit satisfactory to him:

1. That the testimony of the witness is material to either party, and that he resides in the division or subdivision in which such judge or magistrate holds office;

2. That a commission to take the testimony of such witness has not been issued;

3. That, according to the law of the State where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such judge or magistrate, will be received in the action or proceeding;

He must issue his subpœna requiring the witness to appear and testify before him at a specified time and place.

Taking of deposition.

SEC. 1197. DEPOSITION, HOW TAKEN.—Upon the appearance of the witness, the judge or magistrate must cause his testimony to be taken

in writing, and must certify and transmit the same to the court or judge before whom the action or proceeding is pending, in such manner as the law of that state requires.

Rules of examination.

GENERAL RULES OF EXAMINATION

Order of proof.

SEC. 1198. ORDER OF PROOF, HOW REGULATED.—The order of proof must be regulated by the sound discretion of the court. Ordinarily, the party beginning the case must exhaust his evidence before the other party begins.

Exclusion of witnesses.

SEC. 1199. WHAT WITNESSES MAY BE EXCLUDED.—If either party requires it, the judge may exclude from the court-room any witness of the adverse party not at the time under examination, so that he may not hear the testimony of other witnesses; but a party to the action or proceeding can not be so excluded; and if a corporation is a party thereto, it is entitled to the presence of one of its officers, to be designated by its attorney.

Control of interrogation of witnesses.

SEC. 1200. COURT MAY CONTROL MODE OF INTERROGATION.—The court must exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness, and as effective for the extraction of the truth, as may be; but subject to this rule, the parties may put such pertinent and legal questions as they see fit. The court, however, may stop the production of further evidence upon any particular point when the evidence upon it is already so full as to preclude reasonable doubt.

"Direct examination" and "cross-examination" defined.

SEC. 1201.—DIRECT EXAMINATION AND CROSS-EXAMINATION DEFINED.—The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness, upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

"Leading question."

SEC. 1202. LEADING QUESTION DEFINED.—A question which suggests to the witness the answer which the examining party desires, is denominated a leading or suggestive question. On a direct examination, leading questions are not allowed, except in the sound discretion of the court, under special circumstances, making it appear that the interests of justice require it.

Refreshing memory.

SEC. 1203. WHEN WITNESS MAY REFRESH MEMORY FROM NOTES.—A witness is allowed to refresh his memory respecting a fact, by anything written by himself, or under his direction, at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. But in such a case the writing must be produced, and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it to the jury. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts, but such evidence must be received with caution.

Cross-examination; limits of.

SEC. 1204. CROSS-EXAMINATION, AS TO WHAT.—The opposite party may cross-examine the witness as to any facts stated in his direct examination or connected therewith, and in so doing may put leading questions, but if he examine him as to other matters, such examination is to be subject to the same rules as a direct examination.

Impeaching own witness.

SEC. 1205. PARTY PRODUCING WITNESS, HOW FAR MAY IMPEACH HIS CREDIT.—The party producing a witness is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in section 1208.

Reexamination of witness.

SEC. 1206. WITNESS, HOW EXAMINED; WHEN REEXAMINED.—A witness once examined can not be reexamined as to the same matter without leave of the court, but he may be reexamined as to any new matter upon which he has been examined by the adverse party. And after the examinations on both sides are once concluded, the witness can not be recalled without leave of the court. Leave is granted or withheld, in the exercise of a sound discretion.

Impeaching a witness, by contradictory evidence; general reputation.

SEC. 1207. HOW IMPEACHED.—A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he had been convicted of a felony.

Former conflicting statements of witness.

SEC. 1208. SAME.—A witness may also be impeached by evidence that he has made, at other times, statements inconsistent, with his present testimony; but before this can be done the statements must be related to him, with the circumstances of times, places, and persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him concerning them.

Evidence of good character, admissibility.

SEC. 1209. EVIDENCE OF GOOD CHARACTER, WHEN ALLOWED.—Evidence of the good character of a party is not admissible in a civil action, nor of a witness in any action, until the character of such party or witness has been impeached, or unless the issue involves his character.

Inspection of writings shown witness.

SEC. 1210. WRITING SHOWN TO WITNESS MAY BE INSPECTED BY ADVERSE PARTY.—Whenever a writing is shown to a witness, it may be inspected by the opposite party, and no question must be put to the witness concerning a writing until it has been so shown to him.

Examination of adverse party.

SEC. 1211. EXAMINATION OF ADVERSE PARTY.—A party to the record of any civil action or proceeding or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent or managing agent of any corporation which is a party to the record, may be examined by the adverse party as if under cross-examination, subject to the rules applicable to the examination of other witnesses. The party calling such adverse witness shall not be bound by his testimony, and the testimony given by such witness may be rebutted by the party calling him for such examination by other evidence. Such witness, when so called, may be examined by his own counsel, but only as to the matters testified to on such examination.

Effect of evidence.

EFFECT OF EVIDENCE

Jury to be judge of.

SEC. 1212. JURY JUDGES OF EFFECT OF EVIDENCE, BUT TO BE INSTRUCTED ON CERTAIN POINTS.—Where trial is by jury, the jury, subject to the control of the court, in the cases specified in this code, are the judges of the effect or value of evidence addressed to them, except when it is declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

Instructions by the court.

Power of judging not to be arbitrary, etc.

1. That their power of judging of the effect of evidence is not arbitrary, but to be exercised with legal discretion, and in subordination to the rules of evidence;

Number of witnesses not controlling.

2. That they are not bound to decide in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

Witness testifying falsely.

3. That a witness false in one part of his testimony is to be distrusted in others;

Testimony of accomplice.

4. That the testimony of an accomplice ought to be viewed with distrust, and the evidence of the oral admissions of a party with caution;

Affirmative must be proved in civil action; preponderance of evidence.

Proof beyond reasonable doubt in criminal prosecution.

5. That in civil cases the affirmative of the issue must be proved, and when the evidence is contradictory the decision must be made according to the preponderance of evidence; that in criminal cases guilt must be established beyond reasonable doubt;

Intrinsic value not controlling.

6. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

When weaker evidence offered, if stronger available.

7. That if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

Rights and duties of witnesses.

RIGHTS AND DUTIES OF WITNESSES

Attendance under subpœna compulsory.

SEC. 1213. WITNESS BOUND TO ATTEND WHEN SUBPŒNAED.—A witness, served with a subpœna, must attend at the time appointed, with any papers under his control lawfully required by the subpœna, and answer all pertinent and legal questions; and, unless sooner discharged, must remain until the testimony is closed.

Testimony compulsory.

Exceptions.

Self-incriminatory, etc., testimony.

SEC. 1214. WITNESS BOUND TO ANSWER QUESTIONS.—A witness must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be to the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

Right to protection.

SEC. 1215. RIGHT OF WITNESS TO PROTECTION.—It is the right of a witness to be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

Exemption from arrest.

SEC. 1216. WITNESS PROTECTED FROM ARREST WHEN ATTENDING, OR GOING, OR RETURNING.—Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

Arrest void.

Liability of person arresting witness.

SEC. 1217. ARREST VOID, AND PARTY MAKING ARREST LIABLE, AND SO FORTH.—The arrest of a witness, contrary to the preceding section, is void, and, when willfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpœna, for the damages sustained by him in consequence of the arrest.

Arrest by officer.

SEC. 1218. TO MAKE AFFIDAVIT IF ARRESTED.—An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

Affidavit by party arrested.

Under subpœna.

1. That he has been served with a subpœna to attend as a witness before a court, officer, or other person, specifying the same, the place

of attendance, and the action or proceeding in which the subpœna was issued; and

2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest; Not of own procurement.

3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpœna. Trial is in progress.

The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested. Exoneration of officer for discharge.

SEC. 1219. COURT MAY DISCHARGE WITNESS FROM ARREST.—The court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of section 1216. If the court has adjourned before the arrest, or before application for the discharge, a judge of the court may grant the discharge. Discharge from arrest by court.

EVIDENCE IN PARTICULAR CASES, AND MISCELLANEOUS AND GENERAL PROVISIONS

Evidence in particular cases, miscellaneous and general provisions.

EVIDENCE IN PARTICULAR CASES

Evidence in particular cases.

SEC. 1220. AN OFFER EQUIVALENT TO TENDER.—An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property. Offer equivalent to tender.

SEC. 1221. WHOEVER PAYS ENTITLED TO RECEIPT.—Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery. Right to receipt.

SEC. 1222. OBJECTIONS TO TENDER MUST BE SPECIFIED.—The person to whom a tender is made must, at the time, specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards. Objections to tender.

SEC. 1223. COMPROMISE OFFER OF NO AVAIL.—An offer of compromise is not an admission that anything is due. Compromise offer not admission.

SEC. 1224. ADMISSION OF DEFENDANT IN DIVORCE PROCEEDINGS.—In proceedings for divorce, no admission of the defendant shall be taken as evidence unless the court shall be satisfied that such admission was made in sincerity and without fraud or collusion to enable the plaintiff to obtain a divorce. (Act Cong. Sept. 21, 1922, C. 370, § 16, 42 Stat. 1010.) Admissions of defendant in divorce proceedings. Vol. 42, p. 1010.

PROCEEDINGS TO PERPETUATE TESTIMONY

Proceedings to perpetuate testimony.

SEC. 1225. EVIDENCE MAY BE PERPETUATED.—The testimony of a witness may be taken and perpetuated as provided in sections 1226 to 1231. Testimony of witness.

SEC. 1226. MANNER OF APPLICATION FOR ORDER; ORDER.—The applicant must produce to the judge of the district court a petition, verified by the oath of the applicant, stating: Petition.

1. That the applicant expects to be a party to an action in a court in the Canal Zone, and, in such case, the names of the persons whom he expects will be adverse parties; or, Expectation of future legal action.

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and, Proof of certain fact essential.

Name of witness, facts involved, etc.

3. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved.

Order to issue.

The judge to whom such petition is presented must make an order allowing the examination, and designating the officer before whom

Notice.

the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in the Canal Zone, must be personally served, and, if unknown, such notice must be served on the clerk of the court, and by publication thereof in some newspaper, to be designated by the judge, for the same period required for the publication of summons. The judge must also designate in his order the clerk of the court to whom the deposition must be returned when taken.

Taking of deposition.

SEC. 1227. NOTICE OF TIME AND PLACE TO BE GIVEN.—The person appointed by the judge to take the depositions is authorized, if a resident of the Canal Zone, on receiving a copy of the order of the judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the Canal Zone, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice; to take the deposition of the witness named in the order of the judge, or in the commission, or, if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

Manner of taking.

SEC. 1228. MANNER OF TAKING THE DEPOSITION.—The examination must be by question and answer, and if the testimony is to be taken in a State of the United States, it must be taken upon a commission to be issued by the judge allowing the examination, under the seal of the court of which he is judge, and upon interrogatories, to be settled in the same manner as in cases of depositions taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the judge may designate. The deposition, when completed, must be carefully read to or by the witness and be subscribed by him, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the clerk designated in the order of the judge allowing the examination, who shall file the same when received. The judge allowing the examination shall file with the clerk the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Deposition to be read to, and subscribed by witness.

All papers to be filed.

Papers prima facie evidence.

SEC. 1229. PAPERS PRIMA FACIE EVIDENCE.—The petition and order, and papers filed by the judge, as provided in section 1228, or a certified copy thereof, are prima facie evidence of the facts stated therein to show compliance with the provisions of sections 1225 to 1231.

Ante, p. 1121.

Production of, in court.

SEC. 1230. WHEN THE EVIDENCE MAY BE PRODUCED.—If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witnesses, or that they can not be found or are unable, by reason of age or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attended at the examination, no objections to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

Effect of.

SEC. 1231. EFFECT OF THE DEPOSITION.—The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to

the relevancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

ADMINISTRATION OF OATHS AND AFFIRMATIONS

Administration of oaths, etc.

Officials authorized to administer.

SEC. 1232. JUDICIAL AND CERTAIN OFFICERS AUTHORIZED TO ADMINISTER OATHS.—Every court, every judge, or clerk of any court, every magistrate, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

Form of.

SEC. 1233. FORM OF ORDINARY OATH TO A WITNESS.—An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth, so help you God."

Form may be varied.

SEC. 1234. FORM MAY BE VARIED TO SUIT WITNESS' BELIEF.—Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may, in its discretion, adopt that mode.

Form, non-Christians.

SEC. 1235. SAME.—When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Affirmation, etc.

SEC. 1236. ANY PERSON WHO PREFERS IT MAY DECLARE OR AFFIRM.—Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm (or declare) that" and so forth, as in section 1233.

GENERAL PROVISIONS

General provisions.

Trial of questions of fact, by jury.

SEC. 1237. QUESTIONS OF FACT, HOW TRIED.—All questions of fact, where the trial is by jury, other than those mentioned in the next section, are to be decided by the jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this code.

Questions of law, by court.

SEC. 1238. QUESTIONS OF LAW ADDRESSED TO THE COURT.—All questions of law, including the admissibility of testimony, the facts preliminary to such admissions, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. Whenever the knowledge of the court is, by this code, made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

Of fact, by judge, referee, etc.

SEC. 1239. QUESTIONS OF FACT BY COURT OR REFEREE.—The provisions contained in this chapter respecting the evidence on a trial before a jury, are equally applicable on the trial of a question of fact before a court, referee, or other officer.

CHAPTER 39.—REPEALS

REPEALS.

Executive Order No. 597½, as amended.

All acts, ordinances, etc., in conflict herewith.

SEC. 1240. REPEAL OF EXISTING LAWS.—The Code of Civil Procedure of the Canal Zone promulgated by the Executive Order of March 22, 1907, and all amendments thereto, and all other acts, ordinances, orders, and parts thereof in conflict herewith, are hereby repealed.

Approved, February 27, 1933.